

PROPOSED AGENDA  
COUNCIL MEETING  
March 22, 2011  
7:00 PM

CALL TO ORDER – Mayor Sammy Phillips  
PLEDGE OF ALLEGIANCE  
INVOCATION

ADOPTION OF AGENDA AND CONSENT ITEMS

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COUNCIL MINUTES  
SPECIAL WORKSHOP MEETING

March 8, 2011

A special workshop meeting of the City Council of the City of Jacksonville was held Tuesday, March 8, 2011 beginning at 5:00 PM in Council Chambers of the Jacksonville City Hall. Present were: Mayor Sammy Phillips, presiding; Mayor Pro-Tem Michael Lazzara and Council Members: Jerry A. Bittner, Fannie K. Coleman, Randy Thomas, and Bob Warden. Council Member Jerome Willingham arrived at 5:13 PM. Also present were: Richard Woodruff, City Manager; Ron Massey, Assistant City Manager; Gayle Maides, Interim Finance Director; Glenn Hargett, Communications and Community Affairs Director; Mike Yaniero, Police Chief; Tim Chesnutt, Recreation and Parks Director; Grant Sparks, Public Services Director; Carmen Miracle, City Clerk; and John Carter, City Attorney. \*An audio recording of the Council Meeting is presently available for review in the City Clerk's Office.

CALL TO ORDER

Mayor Sammy Phillips called the meeting to order at 5:00 PM.

ADOPTION OF AGENDA

A motion was made by Councilman Bittner, seconded by Council Member Coleman, and unanimously approved to adopt the agenda as presented.

RECREATION MASTER PLAN FINAL REVIEW

Tim Chesnutt, Recreation and Parks Director, stated that while developing the Level of Service based Master Plan for the Recreation and Parks Department, Pros Consulting looked for 1) equitable access to services regardless of where citizens lived in the City, 2) statistically valid, 3) any generalization would stand the test of trial and error, and 4) provided a series of steps that if followed and implemented would position the City as one of the best recreation and parks municipal agencies in Eastern North Carolina. Mr. Chesnutt then introduced Leon Younger and Neelay Bhatt of Pros Consulting and Ryan Cambridge of AECOM.

Using the PowerPoint presentation attached to the official minutes as Exhibit A, Mr. Bhatt, Project Manager, reviewed the summary of findings from the community input surveys, the statistically valid survey process, and benchmarking. Mr. Cambridge reviewed findings from the assessment of facilities, programs, and operations/finance.

Mr. Bhatt stated that gaps and overlaps were found by looking at facility inventory and mapping them. A critical piece of the study was the assimilation of the information they received from the community into the demographics and trends. The resulting model for the facility and program ranking was based on a combination of what was most important, balanced with the highest unmet needs.

Mr. Cambridge reviewed Cost Estimates for existing and future development. He stated the real intent of the cost estimates was to show the cost to satisfy all of the needs to make the system as good as it possibly could be. A lot of the cost was in maintaining, upgrading and restoring the existing facilities. The cost estimates were made on broad assumptions seen to be valid. Goals and recommendations for implementation were provided by both Mr. Cambridge and Mr. Bhatt. They discussed recommendations in the areas of finance, operations, programs, parks and facilities, and marketing and branding.

Following the presentation, Mayor Pro-Tem Lazzara asked about the Military Growth Task Force report that was commissioned as part of this process. Mr. Bhatt said this would be a separate document and they were still working on it with the Task Force. They expected to develop this part of the plan by April 30. As part of that document, they would be looking at regional gaps and recommending future partnerships.

Mayor Pro-Tem Lazzara expressed disappointment that it was not inclusive with this presentation. He stated that his understanding when this was added to the project was that it would be integrated into the complete plan showing service overlaps and the impact of the military populations and growth on the City's recreation system and ability to serve. He pointed out that 70% percent of military families lived off Base.

Mr. Woodruff said staff would be working with the consultants so that the separate Task Force document was coordinated with the City's final plan in order to show the overall effect.

Mayor Phillips asked if there had been any population projections made for what would be served in the next 5, 10, 15, 20 years. Mr. Bhatt stated they had started with the Census tract demographics and added to those. Recommendations would be mindful of the fact that a more regional audience was being served than just Jacksonville itself. A number of County residents ranked the City's parks as the ones they used most frequently. The report was based on both current and future population projections.

Councilman Bittner asked about the consultants' comment that "neighborhood centers were small" and whether that referred to size or to population served. Mr. Cambridge stated that the trend nationwide was to streamline resources by building fewer, but larger regional facilities that offered a greater variety of services.

Councilman Bittner asked if actual demographics of neighborhoods had been undertaken in terms of quantifying increases and decreases in populations typically interested in various recreational services. For example, some neighborhoods may have started out as young families that were now more populated by retirees, etc.

Mr. Bhatt stated that the plan recommendations were based on the site assessment taken at the time and for future projects, the City would need to prepare a feasibility report that looked at conditions at that time. Mr. Woodruff added that before the future of various parks was determined, a study of the populations who would use it would be needed.

Discussion followed on efficiencies, neighborhood centers versus regional facilities, renovating parks and facilities versus expansions, and cost estimates. Mr. Woodruff stated that while you had efficiencies relative to programs, you also needed to have efficiencies relative to maintenance.

Councilman Thomas referred to the recommendation on increased cost recovery and asked if this translated to mean increasing fees. Mr. Bhatt said not necessarily and pointed out partnerships, sponsorships, volunteers, as well as joint use and service provisions with other groups such as the school system.

Mayor Pro-Tem asked about efficiency in terms of providing more services at a reduced cost to the citizens. Mr. Bhatt stated that they originally had felt that staff was slightly top heavy, a situation that had already changed and been addressed. Another aspect to being more efficient was to have tangible standards for maintenance, program offerings, and marketing and to use a data asset management system to become more proactive.

#### PARKS AND RECREATION – PROPOSED MOWING CHANGES

Using the PowerPoint presentation attached as Exhibit A, Michael Liquori, Parks Superintendent, provided details on a staff proposal for an in-house mowing contract versus continuing to contract the service. He reviewed that staff had taken over the litter clean up contract and had been able to provide twice the level of service at the same cost. Staff believed they could provide an increased level of service for the mowing contract without increasing the



cost as well. Full time City staff would not change because temporary labor would be hired from an agency for this purpose. The current contract was due to expire June 30, 2011.

Councilman Bittner expressed concern in making a major financial decision in the middle of a budget year. He pointed out that the City might be tasked with picking up more area under the State's control if State cut their budget further.

Mr. Woodruff stated it was budget neutral and the reason for bringing it before Council now was because the growing season was about to start and the contract would be expiring soon.

Mr. Liquori pointed out the increased level of service from the City taking over the litter pick up duties. Mayor Pro-Tem Lazzara stated it would have been beneficial to have actual data on that service to review, but with improved efficiency and no cost increase, he was in favor of giving staff the opportunity to try it, although he would like to see a recap or scorecard at the end of the summer with actual data on how they did.

Mr. Woodruff stated possible options would be to continue with the current contract, re-bid the contract and allow the City to bid, or convert it to a City function in line with the presentation. Or if Council preferred they could renew the contract and then present this idea again during the budget process for next summer.

Following discussion, a motion was made by Mayor Pro-Tem Lazzara and seconded by Councilman Warden to authorize the in-house mowing project as presented with the requirement that a detailed recap / scorecard of the results in service and efficiency be provided to Council at the end of the season.

Mr. Bittner said he was not opposed to the concept or efficiency ideas, but questioned the timing as well as the loss of a better opportunity to compare the savings via the bid process.

A vote was taken on the motion and was approved on a 5 – 1 vote with Councilman Bittner voting no.

#### NOISE ORDINANCE

Mr. Woodruff stated that several months ago, neighbors in the general area of Hooligans contacted Council Members about noise from the establishment, and a number of complaints had been submitted. Staff had worked with the proprietors of Hooligans to try to solve the problems. However, staff had noted deficiencies of the current noise ordinance and if Council wished to expand the current regulations, potential changes to the ordinance needed to be considered.

Using the PowerPoint presentation attached as Exhibit A, Tim Malfitano, Deputy Police Chief, reviewed the current Ordinance which was based solely on measuring “directional” sound. The Police Department had responded to the complaints on loud music and after taking sound measurements, had found them to be below those established by the Ordinance. Further research showed that it was the bass or low pressure sound (hertz) that was the issue and their current Ordinance did not measure this type of sound.

Different measurements of sound were discussed and a demonstration of directional sound (A) and hertz (C) was presented by David Evans of Sound Advice. Following the demonstration, Deputy Chief Malfitano stated the department would like to propose adding the ‘C’ scale to the Ordinance so that hertz (pressure of sound) could be measured. Their current meter devices would measure both ‘A’ and ‘C’ sound. In addition, they recommended taking four readings from the complainant’s property versus the current one reading established by the Ordinance.

Mayor Phillips asked for more information on how the “A” reading only was established. He also asked the City Attorney for a legal review of adding the “C” scale to the Ordinance.

Chief Yaniero stated that ‘A’ rating was used because they were originally only addressing noise and not pressure. Most of the pressure complaints were related to vehicles and there was a different ordinance that established it was a violation if the sound could be heard 25 feet from a vehicle.

Mr. Carter stated that his only concern was how the appropriate rating was established.

Councilman Warden asked about the criteria that would be used to recommend an appropriate sound threshold and how Council could have confidence the rating was fair to both citizens and businesses.

Chief Yaniero stated that the research used to establish the decibel limitations were from Rutgers University who had a sound center that helped municipalities establish equitable limits.

Mayor Pro-Tem Lazzara asked if the decibel limits to be proposed would allow for the businesses to still operate and also lessen the disturbance to the homeowners.

Chief Yaniero said there would most likely be some violations, but stated that the department would work with any businesses who had issues, as well as counsel them on remedies they could use such as various types of baffling.

Councilman Willingham expressed concern that the proposed changes should not disqualify any musical culture or club that plays certain styles of music, such as R&B, which was a percussion based style of music.

It was suggested Council members might like to attend a field experiment in order to get a better idea of the sound issues from the perspective of both the Business and the neighborhood.

It was the consensus of Council that staff may propose the actual ordinance amendment at the next Regular meeting on March 22, 2011 for consideration.

ADJOURNMENT

A motion was made by Mayor Pro-Tem Lazzara, seconded by Councilman Thomas, and unanimously adopted to adjourn the meeting at 6:51 PM.

## COUNCIL MINUTES

### REGULAR MEETING

March 8, 2011

A Regular Meeting of the City Council of the City of Jacksonville was held Tuesday, March 8, 2011 beginning at 7:00 PM in the Council Chambers of City Hall. Present were: Mayor Sammy Phillips, presiding; Mayor Pro-Tem Michael Lazzara and Council Members: Jerry Bittner, Fannie K. Coleman, Randy Thomas, Bob Warden and Jerome Willingham. Also present were: Richard Woodruff, City Manager; Ronald Massey, Assistant City Manager, Gayle Maides, Interim Finance Director; Glenn Hargett, Communications and Community Affairs Director; Mike Yaniero, Police Chief; Rick McIntyre, Fire Chief; Grant Sparks, Public Services Director; Reggie Goodson, Planning and Development Services Director; Carmen Miracle, City Clerk; and John Carter, City Attorney. \*An audio recording of the Council Meeting is presently available for review in the City Clerk's Office.

#### CALL TO ORDER

Mayor Sammy Phillips called the meeting to order at 7:08 PM.

#### PLEDGE OF ALLEGIANCE

Councilman Bittner led the Pledge of Allegiance.

#### INVOCATION

Mr. John Carter pronounced the invocation.

#### ADOPTION OF AGENDA AND CONSENT ITEMS

A motion was made by Mayor Pro-Tem Lazzara, seconded by Councilman Thomas, and unanimously approved to adopt the agenda as amended to add to Presentations Item C - Resolution of Support for the Community College System and specifically Coastal Carolina Community College, and to move Public Hearing Item #1-Community Development Public Private Partnership-Downtown Target Area Residential Project, to follow Public Hearing Item #3 – Rezoning from R-7 to CU-NB – 838 Gum Branch Road, Spa Place LLC.

#### ADOPTION OF MINUTES

A motion was made by Councilman Bittner, seconded by Councilman Warden, and unanimously adopted to approve the minutes of a Goal Setting Workshop held February 15, 2011

as presented, the minutes of a Special Workshop Meeting held February 22, 2011 as presented, and the minutes of the Regular Meeting held February 22, 2011 as presented.

## PRESENTATIONS

### YARD AND BUSINESS OF THE MONTH BEAUTIFICATION AWARDS

With the assistance of Councilman Bob Warden, Council Liaison to the Beautification and Appearance Commission, Mayor Phillips presented the Outstanding Residential Yard of the Month to Shane Tomlinson for his residence at 2613 Northwoods Drive. The Outstanding Business Property Yard of the Month was awarded to Jerry Stevenson of Lejeune Motorsports at 955 Lejeune Boulevard.

### REPORT TO COUNCIL – COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

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Mr. Steve Forney, Vice Chairperson of the Community Development Advisory Committee, provided a brief report on the annual activities, accomplishments and goals of the Committee. He also thanked Lillie Gray and her staff for all their accomplishments this past year. Councilman Jerome Willingham, Council Liaison to the Committee, commended Mr. Forney and the entire Committee for their diligent efforts on behalf of the City.

### RESOLUTION SUPPORTING THE COMMUNITY COLLEGE SYSTEM AND SPECIFICALLY COASTAL CAROLINA COMMUNITY COLLEGE

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Mayor Pro-Tem Lazzara stated that at the Metro Mayors Coalition meeting last week, a Resolution was adopted in support of the UNC system for funding and the community college system was added for the important role it plays in local economic development re-training displaced workers. He asked Mr. Woodruff to prepare a Resolution, which was placed before Council. Mayor Pro-Tem Lazzara stated that if adopted, he would like to present a copy to Senator Harry Brown later in the week.

A motion was made by Councilman Willingham, seconded by Council Member Coleman, and unanimously approved to adopt the Resolution as presented. Mayor Pro-Tem Lazzara read the Resolution into the record and for benefit of the public.

Resolution 2011-05, Bk. 6, Pg. 378

PUBLIC HEARINGS

GROWTH MANAGEMENT ELEMENT PLAN LAND USE MAP AMENDMENT –  
838 GUM BRANCH, SPA PLACE LLC

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Ms. Mary Sertell, Senior Planner, stated that a request had been received to amend the Growth Management Element Plan by changing the Future Land Use (FLU) designation of one parcel from Low Density Residential (LDR) to Neighborhood Commercial (NC). The parcel was located at 838 Gum Branch Road, northwest of the Gum Branch Road and Marine Boulevard intersection.

Mayor Phillips recessed the regular meeting at 7:29 PM in order to convene the Public Hearing.

The following citizens expressed opposition to the amendment: Michael Getchel, 836 Gum Branch Rd.; Joe Lancholtz, 115 King Richard Ct.; Rick Goldman, 206 Nottingham Rd.; Harvey Lambka, 606 Little John Ave.; John Getty, 120 King Richard Ct.; Iris Foreman, 309 King Richard Ct.; Melanie Getchel, 836 Gum Branch Rd.; Howard Funck, 328 Nottingham Road Rd.; Toby Riley, 323 Nottingham Rd.; George Taylor, owns the house at 312 King Richard Ct.; Hershel Zole (No address stated); Resendo Daleone, 101 King Richard Ct.; Julius Kausake, 204 Nottingham Rd.; and Anthony Foreman, 309 King Court Ct.

Residents expressed many of the same concerns as follows: That the facility would negatively affect their property values; that the facility could cause traffic and safety issues; that the business would increase crime in the neighborhood, in particular - thefts; concerns that residential property should not be purchased cheaply and then expected to be allowed to have it changed to a more expensive commercial use; expressions that there were many commercial buildings sitting empty that could be used without impacting residential neighborhoods; concerns that this parcel was not large enough for the proposed parking and expansion in use; that the facility would cause ingress/egress problems due to the divided entryway on Nottingham Road, which would necessitate customers to drive into the neighborhood and make U-turns; concerns that the facility would be a safety hazard for children in the neighborhood; that the facility would cause a bottleneck of traffic at peak times at the entrance to the neighborhood; that the business would bring undesirable strangers into the area; that the location was a school bus stop and this facility could make the location more dangerous for children.

Toby Riley also submitted a citizen petition from the neighborhood opposing the business. A copy of the petition shall be retained in the March 8, 2011 Exhibit file in the City Clerk's Office.

Juliana Norris, property owner/applicant, spoke in favor of the request. She stated that the business she was proposing would be similar to the Carolina Pines Med Spa located on Henderson Drive that she also owned. The purpose of the business was to offer medical aesthetics and state-licensed massage therapy. She emphatically stated that this was not a massage parlor.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 8:00 PM and reconvened the regular meeting.

A motion was made by Councilman Bittner, seconded by Mayor Pro-Tem Lazzara, and unanimously approved to deny the Growth Management Plan Land Use Map Amendment.

Mayor Phillips asked if the motion made the following rezoning request on the same project a moot issue. Mr. Carter said no and explained that Council could still approve the rezoning request, even if it was not in conformity with the City's Growth Management Plan.

REZONING FROM R-7 TO CU-NB – 838 GUM BRANCH ROAD, SPA PLACE LLC

This request was the specific Rezoning request for the previously held Spa Place Growth Management Plan Amendment public hearing. Mr. Carter pointed out that Rezoning required Council to state specific Finding of Facts when approving or denying the request. He reviewed the Findings of Fact worksheet contained in the agenda item.

Mayor Phillips recessed the regular meeting at 8:03 PM in order to convene the Public Hearing.

Mayor Phillips advised that all statements made in the previous public hearing were hereby incorporated into the Rezoning hearing as if fully set out.

Juliana Norris, property owner/applicant, responded to the concerns of the neighborhood. She stated that a site plan has been prepared for the property and according to the ratio of square footage to parking stalls, the property was of good enough size to accommodate the volume of traffic for this size business. Second, school bus hours ended in the morning before the business would open and the volume of traffic would not increase to an undesirable level. Third, this particular property had been an eyesore for many years and this change would enhance this

corner/entrance to Sherwood Forest. She also pointed out there were numerous adjacent businesses located directly across the street.

Lloyd Koonce, 217 Nottingham Rd., asked all those in attendance who did not want the business in or at the entrance to their neighborhood to please rise. It appeared that 95% of the people in the audience stood up.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 8:08 PM and reconvened the regular meeting.

A motion was made by Councilman Warden, seconded by Councilman Thomas, and unanimously adopted to deny the rezoning request based on Finding of Fact C – Impact to the adjacent property owners will be an inconvenience and potential harm to the surrounding community.

#### RECESS/RECONVENE

Mayor Phillips recessed the meeting for those who did not want to stay for the entire meeting at 8:10 PM. Mayor Phillips reconvened the meeting at 8:17 PM.

#### COMMUNITY DEVELOPMENT PUBLIC PRIVATE PARTNERSHIP – DOWNTOWN TARGET AREA RESIDENTIAL PROJECT

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Mr. John T. Carter, Jr., City Attorney, stated that the City of Jacksonville proposed to enter into a public/private partnership with 4 qualified builders for the development of single-family homes in the general downtown area. The single-family homes would be constructed utilizing a unified development theme. This project was part of the City of Jacksonville Clean and Green Initiative.

Mr. Carter reviewed the legal details of the builders' agreement. Ms. Lillie Gray, CD Administrator reviewed the design aesthetics of the projects and stated that the goal was to complete 22 homes in the area over the next 2-3 years. She then reviewed the builders selected for each lot as follows: Lot #19: Delphi Construction; Lot #18: Eastern Builders; Lot #9: - Hadley Construction, and Lot #10: Marlo Construction.

Councilman Thomas asked about the assistance in the agreement that the City would provide for water and sewer hook ups. Ms. Gray said that the \$25,000 allocated was the total assistance for all of the properties.



Councilman Thomas also asked why garbage disposals were not allowed to be installed in the homes. Ms. Gray responded that this was a stipulation suggested by Public Services who indicated garbage disposals were detrimental to the waste water system.

Mayor Phillips recessed the regular meeting at 8:31 PM in order to convene the Public Hearing.

With no one desiring to speak, Mayor Phillips closed the Public Hearing at 8:32 PM and reconvened the regular meeting.

A motion was made by Mayor Pro-Tem Lazzara and seconded by Councilman Willingham to adopt the Resolution as presented and authorize the City Manager and City Clerk to sign the Builders' Agreement and deeds conveying these lots subject to conditions set forth in the Builders' Agreement.

Councilman Willingham commended the leadership of the City Manager and the excellent work of the staff to develop and bring this worthwhile project to fruition.

A vote was taken on the previously made motion and was unanimously approved.  
Resolution 2011-06, Bk. 6, Pg. 379

ZONING TEXT AMENDMENT – ARCADES – DAVE NEUMANN

Mr. Jeremy B. Smith, Senior Planner, stated that Mr. Dave Neumann was requesting modifications to the City's Zoning Ordinance in order to establish "Arcade" as a permitted use. These changes would create a unique type of recreational/entertainment use for citizens of all ages, as well as visitors to the Jacksonville area. Staff utilized the draft Unified Development Ordinance which included this permitted use while preparing this text amendment. Mr. Smith explained that in conjunction with this request, staff had defined the uses for Arcade as well as Arcade Adult. In addition, they had proposed a definition for Sweepstakes Gaming, even though it was not proposed as an allowable use due to the current legislative moratorium.

Mayor Pro-Tem Lazzara asked how these businesses would be regulated and it was ensured they were operating as allowed once they opened. Mr. Smith said it would most likely be complaint driven and regulated through Code Enforcement. Mr. Woodruff added that in terms of complaints, the Police Department may also utilize undercover operations to assist in regulating.

Councilman Bittner asked if the definition included for Sweepstakes Gaming would render facilities such as Chuck E Cheese non-conforming. Mr. Smith said yes, that their electronic games utilizing tokens to exchange for an item would fall under the definition.

Mr. Woodruff stated that he did not feel it was Council's intention to create problems for businesses where there were no problems. Mr. Carter advised that the definition for sweepstakes gaming could be removed as it was not necessary since State regulations currently prohibited such uses.

Mayor Phillips recessed the regular meeting at 8:40 PM in order to convene the Public Hearing.

Mike Rala, 613 Watkins Rd, Maryville, TN, said that he currently owned two gaming facilities (Fayetteville, NC and Newport News, VA) and his intent was to open an establishment for video gaming such as X-Box, not sweepstakes for those 18 and over.

With no one desiring to speak, Mayor Phillips closed the Public Hearing at 8:42 PM and reconvened the regular meeting.

A motion was made by Councilman Bittner, seconded by Councilman Thomas, and unanimously adopted to approve the Zoning Text Amendment with the elimination of the section defining Sweepstakes Gaming.

Ordinance 2011-13, Bk. 10, Pg. 304

#### ZONING TEXT AMENDMENT – AMENDMENTS TO SECTION 19 RESIDENTIAL ZONES – GENERAL PROVISIONS

Mr. Ryan King, Planning Administrator, stated that staff had drafted a Zoning Text Amendment that would allow a 50% encroachment into the required front, side and rear yard setbacks for handicap ramps. Currently encroachments were only be allowed in the side and rear setbacks. The purpose of this change was to allow for handicapped ramps. If an applicant was unable to meet the 50% encroachment, they could apply to the Board of Adjustment for a variance.

Councilman Warden asked why the 50% limitation was necessary, as he felt that if a handicapped person needed a ramp to access their homes, they should be able to build as needed. Councilman Bittner agreed and said they should be able to build a ramp without the expense of submitting plans or having to spend time going to the Board of Adjustment for variances.

Mr. Woodruff stated that on most homes, the ramps ran parallel to the house and if more space was needed, they normally double backed.

Mayor Pro-Tem Lazzara stated that the requirement allowed for aesthetically pleasing ramps, instead of having ramps running straight from the house directly to the road or sidewalk.

Photographs of various handicapped ramps were displayed for Council information.

Mr. Woodruff proposed amending the language to state the following: "Should a property owner find he could not meet the standards, the Director of Development Services could waive the encroachment to the degree needed to accomplish installation of the ramp with notification to Council."

Mayor Pro-Tem Lazzara expressed concern about ramps extending directly to the road or sidewalks and Mr. Woodruff said the amending language proposed would prevent that from occurring.

Mayor Phillips recessed the regular meeting at 8:50 PM in order to convene the Public Hearing.

With no one desiring to speak, Mayor Phillips closed the Public Hearing at 8:51 PM and reconvened the regular meeting.

A motion was made by Councilman Bittner, seconded by Mayor Pro-Tem Lazzara, and unanimously adopted to approve the Zoning Text Amendment with the following amendment: "Should a property owner find he could not meet the standards, the Director of Development Services could waive the encroachment to the degree needed to accomplish installation of the ramp with notification to Council."

Ordinance 2011-14, Bk. 10, Pg. 306

**ZONING TEXT AMENDMENT – CREATION OF SECTION 117 ICE HOUSES –  
ATLANTIC ICE DISTRIBUTORS**

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Mr. Jeremy B. Smith, Senior Planner, stated that Atlantic Ice Distributors were requesting amendments to the City's Zoning Ordinance in order to establish "Ice House" as a permitted use. These changes would create an avenue for this use to operate within certain zoning districts provided they meet certain development standards. It had been determined that the proposal was consistent with expected provisions that would be incorporated into the proposed Unified Development Ordinance (UDO). He reviewed the standards along with photographs of various

ice house establishments. The Planning Board had also proposed adding an increase of four foot wide planting strip all the way around, three sides protected.

Councilman Warden expressed concern about the requirement that the building must be at least 100 linear feet from any lot line, which would require the owner to have at least an acre lot for a building typically no larger than 10 x 10.

Mr. King explained that the UDO Steering Committee had been concerned about vehicle stacking as typically these units were utilized by recreational boaters or construction vehicles with trailers attached.

Mayor Phillips recessed the regular meeting at 8:55 PM in order to convene the Public Hearing.

Mr. Russell Jones, 635 Richlands Loop Rd, applicant, stated that they typically leased property for these units from other businesses and located the units on the outskirts of the property, off to the side away from the businesses. He said serious stacking issues had not been a problem in the past. He requested Council consider 20 or 25 feet off the lot line and 50 or 75 feet from a main highway as the 100 foot requirement pushed them into the center of a business location.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 8:57 PM and reconvened the regular meeting.

Mayor Pro-Tem Lazzara suggested deferring the request until Council conduct a workshop as he would like more information and discussion on where these units would be permitted as well as on setbacks and aesthetic requirements as many such units had become unsightly along main thoroughfares.

Councilman Bittner moved to defer the request to Council's second meeting in April. Mr. Carter reviewed the public hearing requirements in terms of re-advertizing, if necessary. Council briefly discussed the proposed standards on setbacks, permitted locations, and aesthetics. Councilman Bittner withdrew his motion to defer.

Mr. Woodruff reviewed Part C – Standards of the proposed ordinance and Council amended as follows: Standard #1 to allow for 100 feet from public street right of way and a minimum of 25 feet from side and rear lot lines; Standard #4 to require that parking and vehicle access areas must be paved with concrete or asphalt; Standard #8 – Exterior must be earth tones

as approved by City staff; and an additional standard that if for any reason the facility is out of business for more than 60 days, the facility/building would be removed.

A motion was made by Councilman Bittner and seconded by Councilman Willingham to approve the Zoning Text Amendment with the amended standards as modified by Council above. A vote was taken on the motion and was approved on a 5 – 1 vote, with Mayor Pro-Tem Lazzara voting “nay.”

Ordinance 2011-15, Bk. 10, Pg. 308

CONDITIONAL/SPECIAL USE PERMIT, SITE PLAN, AND SEWER ALLOCATION  
REQUEST – HAMPTON INN (HOTEL) – 1032 HAMPTON INN WAY

Mayor Phillips recessed the regular meeting at 9:12 PM in order to convene the Public Hearing.

Mayor Phillips swore in Ms. Abigail Barman, Planner. Ms. Barman stated that Jacksonville Hospitality Land Development LLC had submitted a Conditional/Special Use Permit and Site Plan application for a proposed hotel to be located near Western Boulevard and Branchwood Drive. If approved, a 69,271 square foot 110 room hotel would be permitted on 2.49 acres at 1032 Hampton Inn Way. The property was zoned Conditional Use-Business-1 (CU-B-1) and within this district any use required a Conditional Use Permit. In addition, a Special Use Permit was required as a result of the combined square footage exceeding 25,000.

With no one desiring to speak, Mayor Phillips closed the Public Hearing at 9:15 PM and reconvened the regular meeting.

Following a brief discussion, a motion was made by Councilman Thomas, seconded by Mayor Pro-Tem Lazzara, and unanimously adopted to approve the Conditional/Special Use Permit and Site Plan with Special Use Permit conditions and Site Plan conditions, based on Findings of Fact A through G being found in the affirmative and to approve the sewer allocation of 13,200 gpd. Special Use Permit Conditions – Record the final plat for the Padgett Tract Subdivision prior to any building permit being issued; Site Plan Conditions – Correct minor issues with Site Plan and site data block related to dumpster enclosure, parking, sidewalks, and number and locations of fire hydrants.

SPECIAL USE PERMIT, SITE PLAN, AND SEWER ALLOCATION REQUEST –  
STEVENSON TOYOTA – 3124 NEW BERN HIGHWAY

Mayor Phillips recessed the regular meeting at 9:17 PM in order to convene the Public Hearing.

Mayor Phillips swore in Mr. Jeremy Smith, Senior Planner. Mr. Smith stated that McKim and Creed had submitted a Special Use Permit and Site Plan application for a proposed automobile sales business. If approved, the 85,079 square foot automobile sales center would be permitted at 3124 New Bern Highway. The property was zoned Business-1 (B-1) and within this district automobile sales lots were permitted; however, the combined square footage was over 25,000, therefore a Special Use Permit was required. As proposed, the development would impact the City's Sewer Flow Allocation Policy; however the project was currently located within the City's Extraterritorial Jurisdiction. A request for voluntary annexation had been received.

Councilman Thomas asked for clarification on the statement that building permits may be withheld. Mr. Smith stated that a number of departments signed off on building permits and he knew some divisions had the requirement that water and sewer be available to the site. Mr. Woodruff stated that the condition could be modified to say no certificate of occupancy would be issued until water was available since a septic system would be in use in the beginning.

Mr. Carter questioned whether Commerce Road would be required to be developed before a certificate of occupancy was delivered for the building.

Discussion followed on sewer expansion in the area and Commerce Road development.

Mayor Phillips swore in Shelly Stevenson, 111 Shady Path, Cedar Point. As far as the Commerce Road agreement, a copy of the legal agreement that was made after the purchase of the property was provided to the City this afternoon. The cost share for that section of Commerce Road is tied in to the land.

Mr. Carter stated it did not run with the land until the agreement was recorded. After discussion, Mr. Carter stated he would like added to the condition that before the CO was issued, there be an acceptable agreement on the Commerce Road issued approved by Council.

With no one else desiring to speak, Mayor Phillips closed the Public Hearing at 9:35 PM and reconvened the regular meeting.

A motion was made by Councilman Warden, seconded by Mayor Pro-Tem Lazzara, and unanimously adopted to approve the Special Use Permit and Site Plan based on findings of fact A through G being found in the affirmative and conditions identified within the Staff Report, to approve the sewer allocation of 5,625 gpd subject to annexation, and that the developer be advised that building permits and/or certificates of occupancies will be withheld until such time

that a Commerce Road agreement be negotiated by the City Attorney and upon final approval by Council.

Conditions of Special Use Permit

- 1) Construct and execute all recommended improvements as noted in the final TIA;
- 2) A. Construct and execute the proposed collector street, named Commerce Road;  
B. Provide an acceptable agreement that outlines the responsible parties for constructing this section of Commerce Road and dedicate the right-of-way to the City of Jacksonville;
- 3) Allowance of use of septic system until water and sewer are made available.

Conditions of Site Plan

- 1) Show correct parking calculations;
- 2) Show the proposed collector street, named Commerce Road, on the Site Plan if an acceptable agreement cannot be provided (Condition of SUP 2B above).

PUBLIC COMMENT

There was no one present desiring to speak during this public comment section.

NEW BUSINESS

CONSENT ITEMS

VOLUNTARY ANNEXATION PETITION – MAI PROPERTY (BAILEY & ASSOCIATES) – HICKORY ROAD - .44-ACRE TRACT

On behalf of Phillip and Claudia Mai, Bailey & Associates had submitted a voluntary annexation petition for a .44-acre tract that was contiguous to the current City limit boundaries. The site was located along Hickory Road adjacent to the Tractor Supply Store. The site was proposed to provide additional parking facilities for a 6,000 square foot commercial development adjacent to this parcel and fronting on US Hwy 258. The commercial parcels were already located within the City limits and were the proposed site of a future IHOP restaurant and tenant spaces. The first step in the voluntary annexation process was to pass a Resolution directing the City Clerk to investigate the sufficiency of the petition.

Council adopted the Resolution as presented.

Resolution 2011-07, Bk. 6, Pg. 380

VOLUNTARY ANNEXATION PETITION – STEVENSON PROPERTY – 16.72-ACRE TRACT

John O. Stevenson had submitted a voluntary annexation petition for a 16.72-acre tract located in the Extraterritorial Jurisdiction and contiguous to the current City limit boundaries. The parcel was located at 3124 New Bern Hwy. and was the site for future development of an

85,079 square foot automobile sales center. The first step in the voluntary annexation process was to pass a Resolution directing the City Clerk to investigate the sufficiency of the petition.

Council adopted the Resolution as presented.

Resolution 2011-08, Bk. 6, Pg. 381

AGREEMENT FOR TRANSPORTATION IMPROVEMENTS PLAN (TIP)  
PROJECT – W-5147, INSTALLATION OF TWO CROSSWALKS ALONG  
WESTERN BLVD.

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The N.C. Department of Transportation (NCDOT) had plans to install crosswalks at two intersections: NC 53 (Western) and SR 1403 (Country Club) and US 17 (Marine Blvd) and NC 53 (Western). The contract to construct this project was advertised in February 2011 with the expectation that a contract would be awarded within the coming months. As such, NCDOT had submitted an agreement that required the City to pay for their portion of the cost of such improvements at the start of the project rather than as a reimbursement. The City had set aside funds for this project in the FY 11 Capital Improvement Plan (CIP) in the amount of \$271,000. The scope of work had been reduced from three intersections to two due to environmental concerns at Gum Branch and Marine Blvd. and the cost estimate for this project had increased. Therefore, staff requested that the CIP be amended to reflect the reduction in the scope of work as well as the revised estimate required by NCDOT.

Council authorized the City Manager or his representative to sign the agreement and approved the budget and CIP amendments as presented.

Ordinance 2011-16, Bk. 10, Pg. 310

Ordinance 2011-17, Bk. 10, Pg. 311

PRELIMINARY AND GENERAL PLAN – EMERSON PARK, SECTION II AT  
WILLIAMSBURG PLANTATION

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Mr. Jeremy Smith, Senior Planner, stated that John L. Pierce and Associates had submitted a Preliminary and General Plan request for the subdivision of 54.48 acres being divided into 85 lots (single family). City staff had reviewed the Preliminary and General Plan and had determined that in order to meet all applicable City standards, a second form of access would be required before some houses could be constructed. As proposed, this project would impact the City's Sewer Allocation Policy. Sewer allocation requests would be processed in accordance with the adopted policy.



Council approved the Preliminary and General Plan conditioned upon: 1) the plans were modified to include a second form of ingress for emergency vehicles, and 2) that until this access was installed, permits would be withheld for all homes beyond 750 feet from two forms of access.

#### LEGISLATIVE BUDGET AMENDMENT – UTILITY MAINTENANCE

The requested budget amendment was due to factors that had occurred during Fiscal Year 2011. Tropical Storm Nicole impacted Jacksonville with more than 20” of rain on September 30 & October 1, 2010. Damage caused by the tropical storm rain required more than 17 manholes to be rebuilt, including lifting manholes, new access cover standards to be implemented and the strapping of the manhole covers to prevent future blow-outs. Additionally, right-of-ways had to be cleared which added over 40 hours of overtime for each line maintenance crew member. Lines Maintenance also was involved in the cleanup of the equalization tank spill. The severe winter weather caused a number of line breaks which resulted in overtime pipe repair, contracted work, and road repair. An example was the line blow-out which occurred on Gum Branch Road where a leaking pipe washed out a portion of the road. This budget item would increase the level of funding in Utility Maintenance to cover these unanticipated events.

Council approved the budget amendment.

Ordinance 2011-18, Bk. 10, Pg. 312

#### RENEWAL OF GEORGETOWN TRAINING GROUNDS LEASE AGREEMENT

On April 8, 1980, the City of Jacksonville and the Onslow County Fireman’s Association jointly leased from the County of Onslow, the old Georgetown High School Football Field, for the purpose of establishing a Fire Training Center. This lease had been renewed every 10 years with the last renewal occurring in 2001. Consequently, this Fire Training Center had been in continuous use for area fire and rescue agencies for the past 30 years.

Council authorized the City Manager to sign the Georgetown Lease Agreement, and any future revisions to said agreement.

#### NON-CONSENT ITEMS

##### DISCHARGE OF STORMWATER FROM LOT 8 ONTO CITY STREET AT 52 OFFICE PARK DRIVE

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Mr. John T. Carter, Jr., City Attorney, stated that the City of Jacksonville’s Public Services Director had received a written request to discharge stormwater runoff from Lot 8 onto

Office Park Drive, Jacksonville, NC from Mitchell Brydge at 1210 Broad Creek Road, New Bern, NC 28560 on behalf of Owner Dr. George Thomas with Southeastern Nephrology at 200 Doctors Drive. The Northeast Office Park was permitted by the State, DWQ, in August of 1990 without any piping for the collection system to the pond on the northeast side or opposite side of the street. Based on City Ordinance 23-23 this request was denied by the Public Services Director. Mr. Brydge requested that Council review and reverse the Public Services Director's decision.

Mr. Carter stated there were several important reasons other than calculations for Council to consider in support of Mr. Sparks denial. With stormwater coming off this lot or any lot onto City streets, there was the possibility of future degradation of street asphalt and street flooding. There was also the liability issue, which may be the most important issue, when allowing City streets to be used as a mean of conveyance to divert water from the lots to stormwater ponds. Mr. Carter pointed out that there were at least seven other lots yet to be developed, so you had to question the precedential effect of allowing this request. Additionally, it's unknown how many other subdivisions were permitted by the State back in the 1990s to use City streets as a means of conveyance to direct water to stormwater ponds.

Mr. Carter stated that along with Mr. Woodruff, City staff met with Mr. Brydge to discuss possible resolutions to the problem.

Councilman Thomas asked about lots 9 and 10 since they were not addressed. Mr. Carter stated that the water flow from those lots did not flow onto City streets, but into Heritage Square.

Mr. Brydge stated he was a builder/developer from New Bern and had built numerous medical offices in Jacksonville as well as several offices on this street. He then introduced Sue Sager, the consulting engineer from KSMC on this project. The lot was originally permitted in 1990 on a whole subdivision stormwater pond. It was common at the time to use the roads as a collection system. They were only asking to use it as it was permitted, but were denied by the City. The reason given for the denial was because the water discharge may create a dangerous condition on this particular street. Ms. Sager was asked to review the guidelines that applied to this street and her calculations found that they were in compliance with the NCDOT guidelines and the discharge was not creating a public safety risk. Mr. Brydge also commented on points that Mr. Carter presented.

Mr. Woodruff clarified what the City offered including helping with developing a cost recovery program, but stated it wasn't about numbers; it was a question of liability. A Building Permit was issued to the developer so that he would not be held up while the stormwater issue was worked out.

Considerable discussion followed on the issues. Mr. Carter pointed out from an email received from DENR that they would have to allow the water to be discharged into the street, but would caveat that by saying whatever method was used to get the runoff to the pond would have to meet local requirements. The pond hasn't been maintained and the City has reported that problem to DENR.

A motion was made by Councilman Willingham and seconded by Councilman Bittner to deny applicant's request to discharge stormwater runoff from Lot 8 at 52 Doctor's Drive in Northeast Office Park onto Office Park Drive.

A vote was taken on the motion to deny the applicant's request and was approved on a 4-2 vote as follows:

Voting "Aye" – Mayor Pro-Tem Lazzara, and Council Members Bittner, Coleman and Willingham.

Voting "Nay" – Council Members Thomas and Warden.

**PURCHASE AND OPTION AGREEMENT FOR SALE OF CITY OWNED  
PROPERTY AND AUTHORIZATION FOR UPSET BID PROCESS –  
JACKSONVILLE BUSINESS PARK**

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Mr. John T. Carter, Jr., City Attorney, stated that Mr. Cliff Ray, Ray Development and Consulting, LLC, had submitted an offer and proposed agreement to purchase +- 2.50 acres of City owned property located in the Jacksonville Business Park, along with a proposed Purchase and Option Agreement. The proposed Agreement included a provision for an option to purchase the additional and adjacent tract that consisted of approximately 3.95 acres, within two years of closing on the original purchase. An appraisal of the adjacent "Noland" property in 2005 resulted in a market value estimate of \$80,000 per acre. Ray Development and Consulting, LLC had offered \$75,000 per acre. If Council approved the Purchase and Option Agreement, the upset bid process as provided in GS 160A-29, would be utilized, with a requirement that additional parties wishing to bid on the property would be required to comply with all provisions of the Purchase and Option Agreement. The City reserved the right to reject any and all offers at anytime.

Mr. Carter pointed out that Mr. Ray ha agreed that in addition to the restrictive covenants that were already on the property, additional restrictions indicated in Section 11 of the Agreement would also be included to run with the land.

The purpose of the land was questioned by Council. Mayor Pro-Tem stated that he thought it was for a business park to create jobs and if the City was trying to sell it, then a for-sale sign should be put up.

Mr. Ray stated he was not securing the land as an investment, but from his prior marketing of the property, a tenant had been located for the front portion of the property. He felt with the development of this building, it would create interest for the remaining land.

Mr. Woodruff stated the proposal before Council was a direct sale and if the interested developer did not continue, Mr. Ray would end up the purchaser of the land. There weren't any incentives being provided by the City. Council could state that the 3.95 acre option could not be closed upon until building permits had been issued on the 2.50 acres. Mr. Ray stated he wouldn't be proceeding with the 3.95 acres if the 2.50 acres did not close.

A motion was made by Councilman Thomas, seconded by Councilman Warden and unanimously approved to adopt the Resolution with the stipulation that the 3.95 acre option could not be exercised until a building permit had been issued on the 2.50 acres.

Resolution 2011-09, Bk. 6, Pg. 382

#### PUBLIC COMMENT

There was no one present desiring to speak during this public comment section.

#### REPORTS

Councilman Bittner reported that at an ONWASA Special Meeting, the expiration of the agreement between ONWASA and its previous executive director was recognized. They were now in the recruitment process for a new executive director.

Mayor Pro-Tem Lazzara stated that he attended the Metro Mayors Coalition Meeting in Greensboro, NC with Ron Massey, Assistant City Manager. They stayed at the Proximity Hotel which was a platinum LEADS hotel. The meeting began with a presentation by Governor Beverly Perdue, followed by Senator Kay Hagan. Budget was the primary discussion topic. Speaker Tom Tillis joined them for dinner to also discuss the budget and annexation.

Mayor Pro-Tem Lazzara congratulated Dr. Ron Lingle for his re-appointment by Governor Perdue to the North Carolina Advisory Commission on Military Affairs.

Mayor Pro-Tem Lazzara stated that the Jacksonville Tourism Development Authority met this month and had an excellent presentation from the Vietnam Veteran Memorial Foundation. The Authority was in the process of adopting their annual budget. Public comment would be heard at their next session and then the budget would be adopted.

Mayor Pro-Tem Lazzara stated Anthony Prinz, MPO Administrator, just launched a new re-designed website and he encouraged everyone to visit it. The website is [www.jump-nc.org](http://www.jump-nc.org).

Mr. Woodruff encouraged everyone to go by the old water plant on West Railroad street to view the improvements made by Public Works.

Mr. Woodruff stated that within the next 10 days, the Land Application Site would have its first control burn.

Mr. Carter stated that in regard to an email Council received in reference to the intersection at Western Blvd. and Gum Branch Rd., a meeting had been scheduled with NCDOT on this concern. Additionally, the Williamsburg Apartments Certificate of Occupancy would not be issued until the stop light was installed at Gum Branch and Williamsburg. Indications were NCDOT would install the light this Spring.

Mr. Carter reported on the ONWASA – City Piney Green trunk sewer. A draft was being worked on, but he was still waiting for the rate structure from ONWASA. Dialog has been continuing, but with the changeover at ONWASA, things have been set back somewhat. Mr. Carter would be sending a partial draft to ONWASA attorney Chuck Kitchen.

#### .ADJOURNMENT

A motion was made by Councilman Willingham, seconded by Councilman Bittner, and unanimously adopted to adjourn the meeting at 10:40 PM.



# City Council Presentation

Presentation Item: <b>A</b> Date: 3/22/2011
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**Subject:** Oath of Office – Police Department - Captain Ashley Ladonna Weaver  
**Department:** Police Department  
**Prepared by:** Michael G. Yaniero, Chief of Police

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## Presentation Description

The promotion of Patrick Traitor to Major has created a vacancy for the position of Captain.

Applications were received and reviewed. The candidates participated in an extensive process consisting of a formal presentation and a series of oral interviews.

Lieutenant Ashley Weaver has been selected for promotion to the rank of Captain.

## Action

Administer Oath of Office to Captain Ashley Weaver

Family Members to Participate in Badge Pinning Ceremony

## Attachments:

A Captain's Oath of Office



# Presentation Information

Presentation  
Item:

**A**

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## Oath of Office – Captain Ashley Ladonna Weaver

### Biography – Ashley LaDonna Weaver

#### **Ashley LaDonna Weaver**

Husband: Chuck

Child: Graysen, almost 3

A native of Pensacola, Florida, Ashley Weaver began her law enforcement career with the Jacksonville Police Department over twelve years ago, when she was assigned to the Uniformed Patrol Division. Captain Weaver has also served in the Investigative Services Division as a Juvenile Investigator, and as a detective in the Special Operations Division. She was assigned as a Sergeant for the Patrol Division and Community Response Team. She was promoted to lieutenant of the Patrol Divisions Community Response team and, most recently, has served as the Lieutenant of the Investigative Services Division. Captain Weaver also serves as the Department's Internal Affairs Officer.

Captain Weaver attained her Advanced Law Enforcement Certification through the North Carolina Training and Standards Commission. She earned her Bachelor of Science Degree (in Mathematics) from Mount Olive College in December, 2006 while working full time for the Jacksonville Police Department. She is a graduate of the FBI's National Academy and is currently working on her Master of Science in Public Safety Leadership.

Her husband, Chuck, will be pinning on her badge.

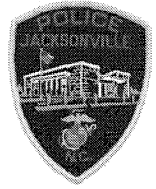
Her son, Graysen, will hold the bible.

# CITY OF JACKSONVILLE



## NORTH CAROLINA

***Michael Yaniero***



**Department of  
Police**

**Office of  
Chief of Police**

Oath of Office  
as Police Captain  
of the  
Jacksonville Police Department

I, **Ashley LaDonna Weaver**, do solemnly swear that I will support and maintain the Constitution and Laws of the United States, and the Constitution and Laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as Captain of the City of Jacksonville Police Department, and maintain and uphold all the laws and regulations of the City of Jacksonville, North Carolina, so help me God.

This 22<sup>nd</sup> day of March 2011.

Signed \_\_\_\_\_

Lieutenant  
Jacksonville Police Department

ATTEST

\_\_\_\_\_  
Sammy Phillips  
Mayor

NORTH CAROLINA  
ONslow COUNTY

I, \_\_\_\_\_, a Notary Public, do hereby certify that

\_\_\_\_\_,  
Mayor for the City of Jacksonville, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

Attachment

**A**



P.O. Drawer 436 • Jacksonville, N.C. 28541-0436 • (910) 455-1472 • FAX #  
(910) 455-9987

**AN INTERNATIONALLY ACCREDITED LAW ENFORCEMENT AGENCY**





# City Council Presentation

Presentation Item: <b>B</b> Date: 3/22/2011
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**Subject:** Report to Council – Board of Adjustment

**Department:** Development Services Department/Planning Division

**Prepared by:** Gary Ouellette, Staff Liaison

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## **Presentation Description**

Mr. Gary Herbold, Chairman of the Board of Adjustment will be in attendance to provide a brief report on the annual activities, accomplishments and goals of the Board of Adjustment.

Council Member Jerry Bittner is the Council Liaison to the Board of Adjustment.

## **Action**

Recognize Chairman Gary Herbold to present the report.

## **Attachments:**

None



# Presentation Information

Presentation Item: <b>B</b>
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## Board of Adjustment Annual Report to Council

### **Mission**

The Board of Adjustment is a “quasi-judicial” administrative body whose purpose is to provide a source of appeal from any unnecessary hardships that might result from the strict enforcement of the City Zoning Ordinance. The responsibilities of the Board of Adjustment are authorized and set forth by North Carolina General Statute 160A, Article 19 Part 3 and the City of Jacksonville Zoning Ordinance, Section 124.

This Board interprets and applies the standards that have been placed in the Zoning Ordinance by the governing board. The Board hears and decides appeals from and reviews any order, decision, requirement, or determination made by the administrative official charged with the enforcement of that ordinance. They are empowered to grant or deny requests for variances from the requirements of the Zoning Ordinance. In addition, the Board hears and makes interpretations on questions involving interpretations of the location boundary lines on the official zoning map, or zoning ordinance text requirements.

### **Membership**

The Board of Adjustment consists of five (5) regular members and two (2) alternates. Four (4) regular members and one (1) alternate, appointed by City Council, and must reside within the City. One (1) regular member and one (1) alternate, appointed by the County Board of Commissioners, and reside within the City’s extraterritorial jurisdiction (ETJ).

The Board of Adjustment meets on the fourth Wednesday of each month on an “as needed” basis. The Board was not tasked with hearing any cases in last calendar year; however, several administrative and training meetings were conducted. On September 22, 2010, the City Manager participated in a training meeting in which the Board conducted a mock hearing on a variance request.

The Board’s last meeting was February 23, 2011 in which a side setback variance was granted in order to restore a nonconforming single family dwelling which was damaged by fire.



# Request for City Council Action

**Consent  
Agenda  
Item:** **1**  
**Date:** 3/22/2011

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**Subject:** Voluntary Annexation Petition – Mai Property (Bailey & Associates) – Hickory Road - .44-acre tract

**Department:** City Clerk's Office

**Presented by:** Carmen K. Miracle, City Clerk

**Presentation:** No

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## Issue Statement

At the March 8, 2011 meeting, Council adopted a Resolution directing staff to investigate the sufficiency of a voluntary annexation petition received from Bailey & Associates on behalf of Phillip and Claudia Mai.

This is a .44-acre tract that is contiguous to the current City limit boundaries. The site is located along Hickory Road adjacent to the Tractor Supply Store property. The site is proposed to provide additional parking facilities for a 6,000 square foot commercial development adjacent to and fronting on US Hwy 258. The commercial parcels are already located within City limits and are the proposed site of a future IHOP restaurant and tenant spaces.

The City Clerk has conducted the required investigation and found as a fact that said petition is signed by all owners of real property lying in the area described. As provided in North Carolina General Statute 160A-31, a Resolution has been prepared scheduling a Public Hearing on this annexation for the April 5, 2011 Meeting.

## Financial Impact

Financial impacts will be presented with the Public Hearing agenda item.

## Action Needed

Consider the Resolution Scheduling Public Hearing

## Recommendation

Staff recommends that Council move to adopt the Resolution as presented.

Approved: ☒ City Manager ☐ City Attorney

## Attachments:

- A Certificate of Sufficiency
- B Proposed Resolution
- C Location Map



# Staff Report

**Consent  
Agenda  
Item:**

**1**

---

## **Voluntary Annexation Petition – MAI Property (Bailey & Associates)**

### **Introduction**

The area proposed for annexation is located within the City's Extra Territorial Jurisdiction (ETJ) and is contiguous to the current City limits. This is a voluntary annexation petition received from Bailey & Associate on behalf of Phillip and Claudia Mai.

This is a .44-acre tract that is contiguous to the current City limit boundaries. The site is located along Hickory Road adjacent to the Tractor Supply Store. The site is proposed to provide additional parking facilities for a 6,000 square foot commercial development adjacent to and fronting on US Hwy 258. The commercial parcels are already located within City limits and are the proposed site of a future IHOP restaurant and tenant spaces.

### **Procedural History**

- March 8, 2011 – Council approved a Resolution directing the City Clerk to investigate the sufficiency of the voluntary annexation petition.
- March 22, 2011 – Council will consider a Resolution scheduling a future Public Hearing.
- April 5, 2011 – Proposed Date to conduct a Public Hearing and for Council to consider adopting the Annexation Ordinance.
- April 30, 2011 – Proposed Effective Date of Annexation Ordinance.

### **Stakeholders**

- Phillip and Claudia Mai - Property owners/petitioner
- Bailey & Associates – Developers
- Adjacent Property Owners
- Citizens of Jacksonville

Staff has not been presented with any negative information related to the annexation and is unaware of any opponents to the petition at this time.

## **Options**

Adopt the Resolution Scheduling the Public Hearing: **RECOMMENDED**

- Pros: The site is contiguous to the current corporate limits and is proposed for future commercial development.
- Cons: None

Deny the Resolution Scheduling the Public Hearing:

- Pros: None
- Cons: This action would conflict with past actions associated with contiguous property proposed for development;

Defer Consideration – Should Council desire additional information, provide direction to staff on the specific information Council would like to receive.

CERTIFICATE OF SUFFICIENCY

MAI PROPERTY (BAILEY & ASSOCIATES)  
.44- ACRE TRACT

To: The City Council of the City of Jacksonville, North Carolina

I, Carmen K. Miracle, City Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G. S. 160A-31, as amended.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Jacksonville, this 9th day of March, 2011.

---

Carmen K. Miracle, CMC  
City Clerk

Tax Parcel ID #332K-24, 25.

Attachment

**A**

RESOLUTION (2011-)

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION  
OF ANNEXATION PURSUANT TO G. S. 160A-31, AS AMENDED

MAI PROPERTY (BAILEY & ASSOCIATES)  
.44- ACRE TRACT

WHEREAS, a petition requesting annexation of the area described herein has been received;  
and

WHEREAS, the City Council has by Resolution directed the City Clerk to investigate the  
sufficiency thereof; and

WHEREAS, certification by the City Clerk as to the sufficiency of said petition has been  
made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Jacksonville,  
North Carolina:

Section 1. That a public hearing on the question of annexation of the area described herein  
will be held at City Hall at 7 o'clock, P.M. on the 5th day of April 2011.

Section 2. The area proposed for annexation is described as follows:

Commencing at N.C.G.S. monument 'Auto', said monument having N.C. grid coordinates of North = 369,426.311 and East = 2,461,854.122; thence south 76 degrees 13 minutes 31 seconds east 250.35 feet (250.3255 grid feet) to an existing iron stake on the northern right-of-way line U.S. Highway 258/N.C. Highway 24, said iron stake having N.C. grid coordinates of North = 369,366.707 and East = 2,462,097.248; thence along said right-of-way line, south 69 degrees 46 minutes 47 seconds east 26.53 feet to a ¼ inch existing iron stake; thence continuing along said right-of-way line, south 66 degrees 44 minutes 05 seconds east 73.53 feet to an existing iron stake; thence south 65 degrees 17 minutes 50 seconds east 51.83 feet to an existing iron stake; thence south 65 degrees 17 minutes 50 seconds east 48.19 feet to an existing iron stake; thence south 62 degrees 41 minutes 27 seconds east 156.98 feet to an existing iron stake; thence continuing along the northern right-of-way line of U.S. Highway 258/N.C. Highway 24, south 62 degrees 41 minutes 27 seconds east 169.24 feet to an existing iron stake at the intersection of the northern right-of-way line of U.S. Highway 258/N.C. Highway 24 with the western right-of-way line of Hickory Street; thence along said right-of-way line of Hickory Street, north 31 degrees 15 minutes 30 seconds east 231.14 feet to an existing iron stake; thence continuing along said right-of-way line, north 31 degrees 15 minutes 30 seconds east 84.06 feet to an existing iron stake, said iron stake being **THE TRUE POINT OF BEGINNING**; thence from the above described point of beginning and leaving said right-of-way line and with the northern line of Tract A as shown Map Book 57 page 213, north 88 degrees 49 minutes 56 seconds west 108.05 feet to an existing iron stake; thence north 62 degrees 23 minutes 33 seconds west 30.40 feet to an existing iron stake; thence with an eastern line of Tract A, north 01 degrees 13 minutes 18 seconds east 130.27 feet to a point; thence with a southern line of Lot 5 as shown in Map Book 13 page 6, north 89 degrees 53 minutes 15 seconds east 130.92 feet to a point on the western right-of-way line of Hickory Street; thence along said right-of-way line, south 00 degrees 29 minutes 38 seconds east 146.79 feet to the point and place of beginning. Containing 0.44 acres and being all of Lots 3 and 4 as shown on a map entitled, "Part One Hickory Hills West" recorded in Map Book 13 page 6 of the Onslow County Registry. The above description was

Attachment

**B**

prepared by Johnny J. Williams Land Surveying, P.C. from a partial survey and computed information completed on January 11, 2011. All courses are correct in their angular relationship to N.C. grid north NAD 1983 (2007 adjustment). Johnny J. Williams, P.L.S. L-3170

Section 3. Notice of said public hearing shall be published in the Daily News, a newspaper having general circulation in the City of Jacksonville, at least ten (10) days prior to the date of said public hearing.

Adopted by the Jacksonville City Council in regular session this 22<sup>nd</sup> day of March, 2011.

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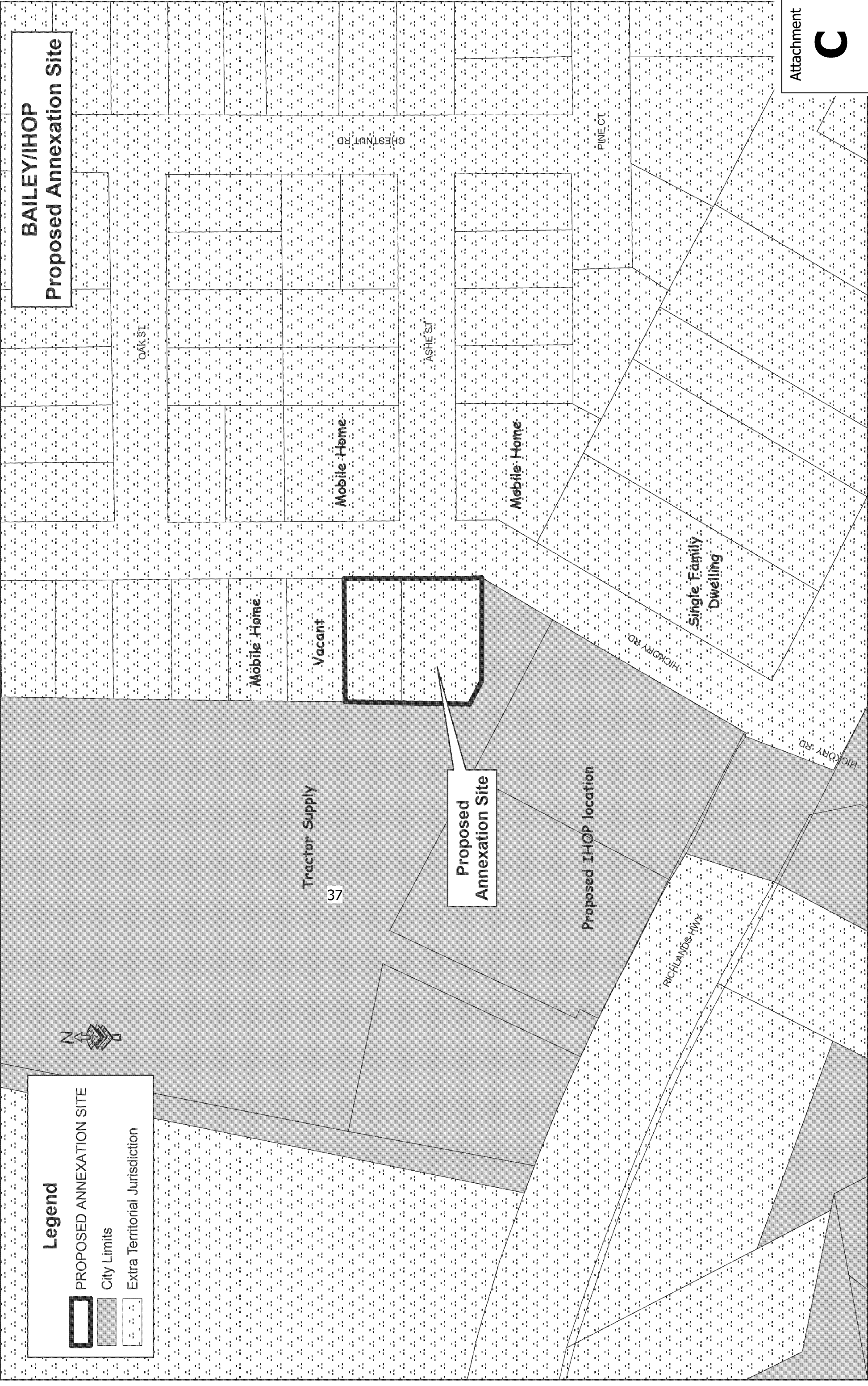
Sammy Phillips, Mayor

ATTEST:

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Carmen K. Miracle, City Clerk





# BAILEY/HOP

37

GHESTING RD

ASBEST

U  
N  
D

RICHLANDS HWY

HICKORY RD

Single Family Dwelling

# Attachment





# Request for City Council Action

**Consent  
Agenda  
Item:** **2**  
**Date:** 3/22/2011

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**Subject:** Voluntary Annexation Petition –John Stevenson Property (Toyota) -  
3124 New Bern Highway – 16.72-acres

**Department:** City Clerk's Office

**Presented by:** Carmen K. Miracle, City Clerk

**Presentation:** No

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## Issue Statement

At the March 8, 2011 meeting, Council adopted a Resolution directing staff to investigate the sufficiency of a voluntary annexation petition received from John O. Stevenson for a 16.72-acre tract located in the Extra Territorial Jurisdiction and contiguous to the current City limit boundaries.

The parcel is located at 3124 New Bern Hwy and is the site for future development of an 85,079 square foot automobile sales center.

The City Clerk has conducted the required investigation and found as a fact that said petition is signed by all owners of real property lying in the area described. As provided in North Carolina General Statute 160A-31, a Resolution has been prepared scheduling a Public Hearing on this annexation for the April 5, 2011 Meeting.

## Financial Impact

Financial impacts will be presented with the Public Hearing agenda item.

## Action Needed

Consider the Resolution Scheduling Public Hearing

## Recommendation

Staff recommends that Council move to adopt the Resolution as presented.

Approved: ☒ City Manager ☐ City Attorney

## Attachments:

- A Certificate of Sufficiency
- B Proposed Resolution
- C Location Map



# Staff Report

**Consent  
Agenda  
Item:**

**2**

---

## **Voluntary Annexation Petition – John Stevenson Property (Toyota) 3124 New Bern Highway – 16.72-acres**

### **Introduction**

The area proposed for annexation is located within the City's Extra Territorial Jurisdiction (ETJ) and is contiguous to the current City limits. The parcel is located at 3124 New Bern Hwy and is the site for future development of an 85,079 square foot automobile sales center.

### **Procedural History**

- March 8, 2011 – Council approved a Resolution directing the City Clerk to investigate the sufficiency of the voluntary annexation petition. Council also approved the Special Use Permit, Site Plan, and Sewer Allocation Request for this project (Stevenson Toyota) with the added condition that no building permit would be issued for the project until an agreement guaranteeing the construction of Commerce Road had been approved by the City Attorney's office.
- March 22, 2011 – Council will consider a Resolution scheduling a future Public Hearing.
- April 5, 2011 – Proposed Date to conduct a Public Hearing and for Council to consider adopting the Annexation Ordinance.
- April 30, 2011 – Proposed Effective Date of Annexation Ordinance.

### **Stakeholders**

- John O. Stevenson – Property owner/petitioner
- Adjacent Property Owners
- Citizens of Jacksonville

Staff has not been presented with any negative information related to the annexation and is unaware of any opponents to the petition at this time.

## **Options**

Adopt the Resolution Scheduling the Public Hearing: **RECOMMENDED**

- Pros: The site is contiguous to the current corporate limits and is proposed for future commercial development;
- Cons: None

Deny the Resolution Scheduling the Public Hearing:

- Pros: None
- Cons: This action would conflict with past actions associated with contiguous property proposed for development;

Defer Consideration – Should Council desire additional information, provide direction to staff on the specific information Council would like to receive.

CERTIFICATE OF SUFFICIENCY

JOHN STEVENSON PROPERTY (TOYOTA)  
3124 NEW BERN HIGHWAY  
16.72-ACRES

To: The City Council of the City of Jacksonville, North Carolina

I, Carmen K. Miracle, City Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G. S. 160A-31, as amended.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Jacksonville, this 9th day of March, 2011.

---

Carmen K. Miracle, CMC  
City Clerk

Tax Parcel ID #350-56.5.

Attachment

**A**

RESOLUTION (2011-)

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION  
OF ANNEXATION PURSUANT TO G. S. 160A-31, AS AMENDED

JOHN STEVENSON PROPERTY (TOYOTA)  
3124 NEW BERN HIGHWAY  
16.72-ACRES

WHEREAS, a petition requesting annexation of the area described herein has been received;  
and

WHEREAS, the City Council has by Resolution directed the City Clerk to investigate the  
sufficiency thereof; and

WHEREAS, certification by the City Clerk as to the sufficiency of said petition has been  
made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Jacksonville,  
North Carolina:

Section 1. That a public hearing on the question of annexation of the area described herein  
will be held at City Hall at 7 o'clock, P.M. on the 5th day of April 2011.

Section 2. The area proposed for annexation is described as follows:

**JOHN O STEVENSON**  
**16.32 ACRE TRACT (TOYOTA SITE)**  
**JACKSONVILLE TOWNSHIP, ONSLOW COUNTY**

TO REACH THE POINT OF BEGINNING COMMENCE AT NCGS MONUMENT "CARTER" WITH THE NAD 83  
VALUE OF NORTHING 383,650.7170 FEET AND EASTING 2,489,29.0710 FEET AND RUNS SOUTH 50  
DEGREES 51 MINUTES 28 SECONDS WEST A DISTANCE OF 849.87 FEET TO AN EXISTING PK NAIL  
LOCATED WHERE THE EXTENDED CENTERLINE OF NCSR 1326 - A.K.A. DRUMMER KELLUM RD,  
INTERSECTS THE EASTERN RIGHT OF WAY OF US HWY 17, THE NORTHWEST CORNER OF TRACT 6  
AND THE SOUTHWEST CORNER OF TRACT 2 AS PER MAP BOOK 46 PAGE 239, THE TRUE POINT OF  
BEGINNING. THENCE FROM THE TRUE POINT OF BEGINNING AND ALONG THE SAID COMMON LINES  
OF TRACT 6 AND TRACT 2 AND THE CENTERLINE OF A 60 FOOT EASEMENT, SOUTH 41 DEGREES 55  
MINUTES 33 SECONDS EAST A DISTANCE OF 117.00 FEET TO AN EXISTING IRON STAKE, A POINT OF  
CURVATURE; THENCE WITH THE SAID CURVE WHICH HAS A RADIUS OF 310.00 FEET EASTERLY AND  
TO THE RIGHT (HAVING A CHORD OF SOUTH 33 DEGREES 50 MINUTES 41 SECONDS EAST A DISTANCE  
OF 87.15 FEET) AN ARC LENGTH OF 87.44 FEET TO AN EXISTING IRON STAKE; THENCE SOUTH 25  
DEGREES 45 MINUTES 50 SECONDS EAST A DISTANCE OF 405.06 FEET TO AN EXISTING IRON STAKE, A  
POINT OF CURVATURE; THENCE WITH THE SAID CURVE WHICH HAS A RADIUS OF 310.00 FEET  
EASTERLY AND TO THE LEFT (HAVING A CHORD OF SOUTH 33 DEGREES 50 MINUTES 41 SECONDS  
EAST A DISTANCE OF 87.15 FEET) AN ARC LENGTH OF 87.44 FEET TO A SET SPIKE; THENCE SOUTH 41  
DEGREES 55 MINUTES 33 SECONDS EAST A DISTANCE OF 196.37 FEET TO A EXISTING IRON STAKE  
LOCATED IN THE CENTERLINE OF A 60 FOOT EASEMENT AND THE WESTERN LINE OF WILLIAM TROY  
HUMPHREY AS PER DEED BOOK 539 PAGE 165; THENCE ALONG THE SAID WESTERN LINE OF WILLIAM  
TROY HUMPHREY LINE AND THE SAID CENTERLINE OF THE 60 FOOT EASEMENT SOUTH 48 DEGREES  
04 MINUTES 27 SECONDS WEST A DISTANCE OF 685.39 FEET TO AN EXISTING IRON  
STAKE LOCATED IN THE RUN OF A DITCH OR BRANCH, ARLINE K. COLLINS AND  
OTHERS LINE, AND THE SOUTHEAST MARGIN OF A 60 FOOT EASEMENT; THENCE  
WITH THE SAID NORTHWEST LINE OF ARLINE K. COLLINS, AND THE SAID  
SOUTHEAST MARGIN OF THE 60 FOOT EASEMENT, AND THE RUN OF THE DITCH OR  
BRANCH, SOUTH 83 DEGREES 38 MINUTES 18 SECONDS WEST A DISTANCE OF 21.65  
FEET TO AN EXISTING ¾" PVC PIPE; THENCE NORTH 86 DEGREES 48 MINUTES 45

Attachment

**B**

SECONDS WEST A DISTANCE OF 18.19 FEET TO AN EXISTING ¾" PVC PIPE; THENCE SOUTH 82 DEGREES 20 MINUTES 15 SECONDS WEST A DISTANCE OF 42.89 FEET TO AN EXISTING ¾" PVC PIPE; THENCE SOUTH 73 DEGREES 34 MINUTES 50 SECONDS WEST A DISTANCE OF 24.57 FEET TO AN EXISTING IRON STAKE LOCATED AT THE NORTHEAST CORNER OF TRACT 7; THENCE ALONG THE NORTHERN LINE OF SAID TRACT 7 NORTH 41 DEGREES 52 MINUTES 33 SECONDS WEST A DISTANCE OF 815.56 FEET TO AN EXISTING IRON STAKE LOCATED IN THE EASTERN RIGHT OF WAY OF US HWY 17 WHICH HAS AN APPROXIMATE 162 FOOT RIGHT OF WAY; THENCE WITH THE SAID EASTERN RIGHT OF WAY OF US HWY 17 NORTH 48 DEGREES 07 MINUTES 34 SECONDS EAST A DISTANCE OF 847.94 FEET TO A SET PK NAIL; THENCE CONTINUING WITH SAID RIGHT OF WAY NORTH 48 DEGREES 04 MINUTES 27 SECONDS EAST A DISTANCE OF 62.06 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING 16.72 ACRES MORE OR LESS. AND BEING ALL OF TRACT 6 AS SHOWN ON THE RECOMBINATION PLAT FOR RWK INVESTMENTS LLC, WILLIAM TROY HUMPHREY AND PARKER MANUFACTURING INC., AND RECORDED IN MAP BOOK 47 PAGE 85. THE COURSES HEREIN ARE REFERENCE TO NC GRID NORTH AS PER MAP BOOK 46 PAGE 239, ONSLOW COUNTY REGISTRY OF DEEDS. Barden Lanier, PLS 1223

Section 3. Notice of said public hearing shall be published in the Daily News, a newspaper having general circulation in the City of Jacksonville, at least ten (10) days prior to the date of said public hearing.

Adopted by the Jacksonville City Council in regular session this 22nd day of March, 2011.

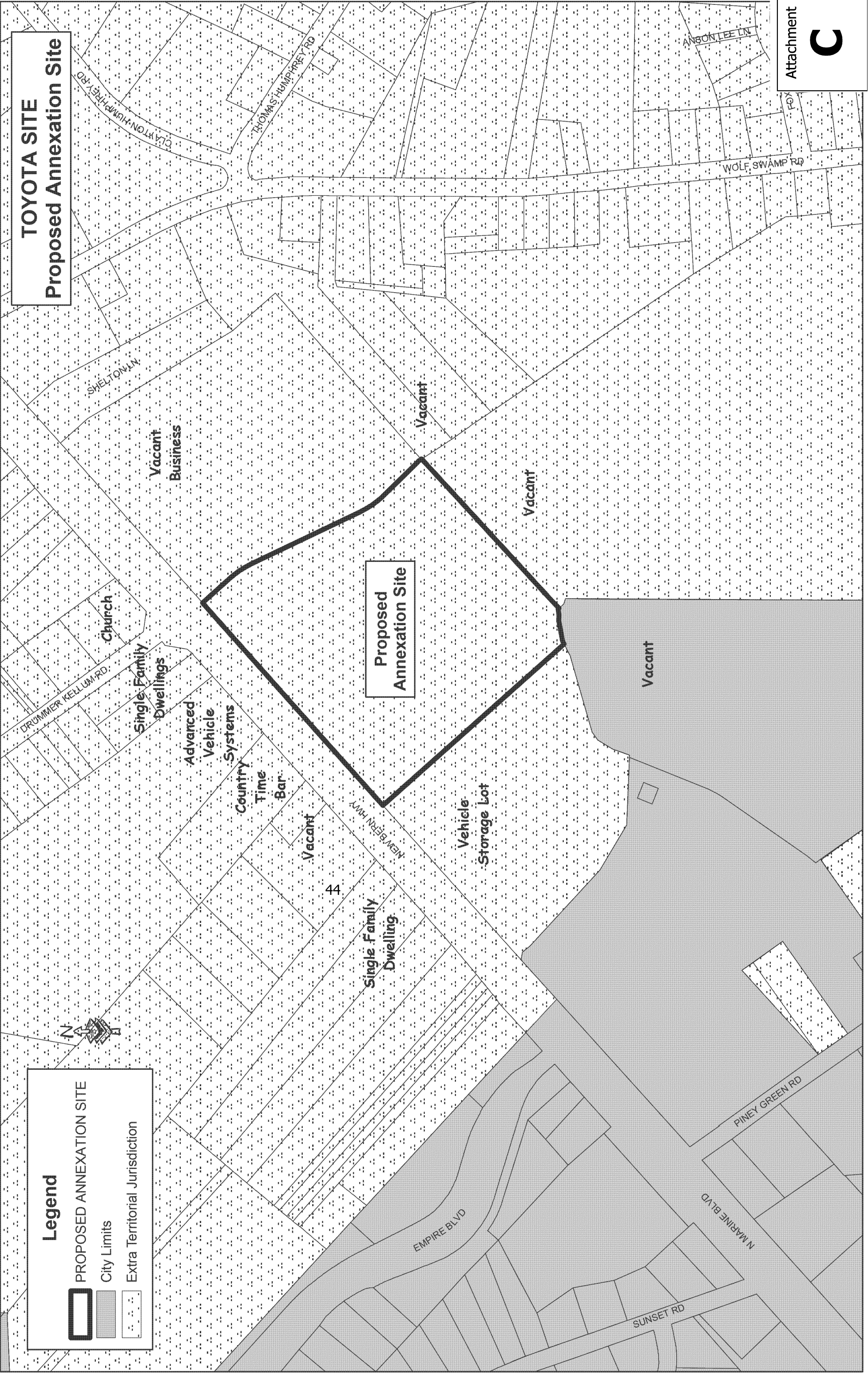
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Sammy Phillips, Mayor

ATTEST:

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Carmen K. Miracle, City Clerk







# Request for City Council Action

**Consent  
Agenda  
Item:** **3**  
**Date:** 3/22/2011

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**Subject:** Voluntary Annexation Petition – Kennith Whichard – 1.39 Acres – Gateway South

**Department:** City Clerk's Office

**Presented by:** Carmen K. Miracle, City Clerk

**Presentation:** No

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## Issue Statement

On behalf of Kennith P. Whichard, Jr., John Pierce and Associates have submitted a voluntary annexation petition for a 1.39-acre tract that is contiguous to the current City limit boundaries. The site is located adjacent to the Target Shopping Center, along Gateway South and future Western Parkway.

The site is a portion of a larger property proposed for a future Kohl's Department Store. The dedicated right of way for Western Parkway abutting the annexation site will be automatically included in the annexation process.

The first step in the Voluntary Annexation process is to pass a Resolution directing the City Clerk to investigate the sufficiency of the petition.

## Financial Impact

Financial impacts will be presented with the Public Hearing agenda item.

## Action Needed

Consider Voluntary Annexation Petition

## Recommendation

Staff recommends Council move to adopt the Resolution as presented.

Approved: ☒ City Manager ☐ City Attorney

## Attachments:

- A Annexation Petition
- B Proposed Resolution
- C Location Map



# Staff Report

Consent  
Agenda  
Item:

3

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## Voluntary Annexation Petition Kennith Whichard – 1.39 Acres – Gateway South

### Introduction

The area proposed for annexation is located within the City's Extra Territorial Jurisdiction (ETJ) and is contiguous to the current City limits.

The site is located adjacent to the Target Shopping Center, along Gateway South and future Western Parkway. The dedicated right of way for Western Parkway abutting the annexation site will be automatically included in the annexation process.

The site is a portion of a larger property proposed for a future Kohl's Department Store.

### Procedural History

- March 22, 2011 – Council will consideration a Resolution directing the City Clerk to investigate the sufficiency of the voluntary annexation petition.
- April 5, 2011 – Proposed date for Council to consider a Resolution scheduling a future Public Hearing.
- April 19, 2011 – Proposed Date to conduct a Public Hearing and for Council to consider adopting the Annexation Ordinance.
- April 30, 2011 – Proposed Effective Date of Annexation Ordinance.

### Stakeholders

- Kennith P. Whichard, Jr. - Property owners/petitioner
- John Pierce & Associates
- Citizens of Jacksonville

### Options

- Adopt the Resolution Directing Staff to Investigate Sufficiency of the Voluntary Annexation Petition – **RECOMMENDED.**  
Pros: The site is contiguous to the current corporate limits and is proposed for future commercial development;  
Cons: None
- Deny the Resolution Directing Staff Investigate the Sufficiency of the Petition –  
Pros: None  
Cons: This action would conflict with past actions associated with contiguous property proposed for development;
- Defer Consideration – Should Council desire additional information, provide direction to staff on the specific information Council would like to receive.

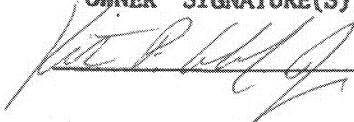
PETITION FOR ANNEXATION

DATE 2-24-2011

TO THE CITY COUNCIL OF THE CITY OF JACKSONVILLE, NORTH CAROLINA:

1. I/We, the undersigned owner(s) of real property hereinafter described, respectfully request that the area described below be annexed to the City of Jacksonville, in accordance with the provisions of Section 160A-31 of the General Statutes of North Carolina.
2. The area to be annexed is contiguous to the corporate limits of the City of Jacksonville, North Carolina, and the boundaries of such territories are as described below.

OWNER SIGNATURE(S), NAME(S), PRINTED OR TYPED, AND ADDRESS(ES)

  
Mr. Kenneth P. Whichard Jr.  
125 Edgebrook Drive  
Greenville, NC 27858  
(252)355-3609

PROPERTY DESCRIPTION

1.39 acres/60m482,08 square feet tract located on Gateway South  
(SEE ATTACHED DESCRIPTION"

Attachment

**A**

RESOLUTION (2011-)

RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G. S. 160A-31

KENNITH WHICHARD PROPERTY  
1.39 ACRES

WHEREAS, a petition requesting annexation of an area described in said petition has been received on March 22, 2011 by the Jacksonville City Council; and

WHEREAS, G. S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Jacksonville deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Jacksonville that:

The City Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the City Council the result of her investigation.

Adopted by the Jacksonville City Council in regular session this 22nd day of March, 2011.

\_\_\_\_\_  
Sammy Phillips, Mayor

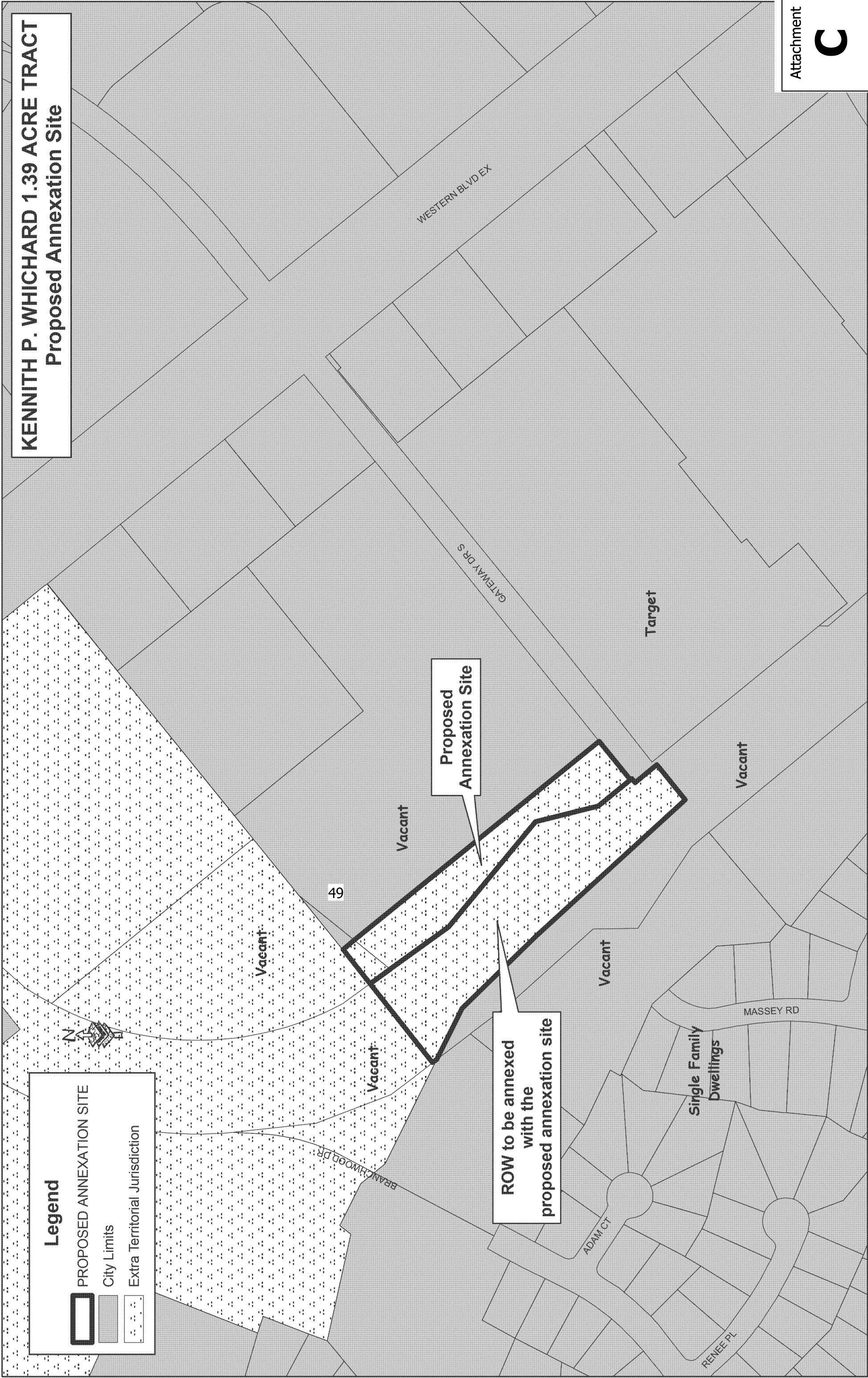
ATTEST:

\_\_\_\_\_  
Carmen K. Miracle, City Clerk

Attachment

**B**

KENNITH P. WHICHARD 1.39 ACRE TRACT  
Proposed Annexation Site





# Request for City Council Action

**Consent  
Agenda  
Item:** **4**  
**Date:** 3/22/2011

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**Subject:** Sale of Property –Prepare Deed of Transfer – Ray Development & Consulting, LLC

**Department:** Legal

**Presented by:** John T. Carter, Jr, City Attorney

**Presentation:** No

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## Issue Statement

Mr. Cliff Ray, Ray Development and Consulting, LLC, submitted an offer and proposed agreement to purchase +/- 2.50 acres of City owned property located in the Jacksonville Business Park, along with a proposed Purchase and Option Agreement for an additional 3.95 acres within two years of closing on the original purchase. At the March 8, 2011 meeting, Council added a condition to the Agreement "That the option cannot be exercised until the buyer has pulled a building permit on the 2.5 acre tract." A resolution was also adopted authorizing advertisement of the offer through the upset bid process.

The details of the Proposal and the upset bid information were published in the Jacksonville Daily News. **The deadline to submit upset bids is March 21, 2011.** At the time this agenda item was prepared, no upset bids had been received. Should an upset bid be received by the deadline, Council will be advised and this item can be removed from the agenda.

Council reserved the right to reject any and all offers at any time. If Council determines to accept this offer, the property may be sold by accepting the offer to purchase and by directing the City Attorney to prepare the Transfer of Deed.

## Financial Impact

\$187,500

## Action Needed

Consider the Sale of Property

## Recommendation

Staff recommends Council Approve the Purchase and Option Agreement, and Authorize the City Attorney to prepare the Deed of Transfer.

Approved: ☒ City Manager ☐ City Attorney

Attachments:

A Amended Purchase and Option Agreement



# Staff Report

Consent  
Agenda  
Item:

4

## Introduction

Mr. Cliff Ray, Ray Development and Consulting, LLC, has submitted an offer and proposed agreement to purchase +/- 2.50 acres of City owned property located in the Jacksonville Business Park, along with a proposed Purchase and Option Agreement. The proposed Agreement included a provision for an option to purchase the additional and adjacent tract consisting of approximately 3.95 acres, within two years of closing on the original purchase.

An appraisal of the adjacent "Noland" property in 2005 resulted in a market value estimate of \$80,000 per acre. At that time the appraiser indicated this approximate figure could be used for the remaining acreage in the park.

Ray Development and Consulting, LLC offered \$75,000 per acre for the initial 2.50 acre tract (\$187,500). Should the Option to Purchase be exercised pursuant to the requirements of the Agreement, the purchase price of that tract shall be the appraised value as determined by a licensed real estate appraiser, mutually agreed upon by the parties, cost of said appraiser to be shared equally.

At the March 8, 2011 meeting, Council added a condition to the Agreement "That the option cannot be exercised until the buyer has pulled a building permit on the 2.5 acre tract" and Council adopted a resolution authorizing advertisement of the offer and use of the upset bid process.

An advertisement was published in the legal ads of the Jacksonville Daily News advising that an offer to purchase and Option Agreement had been received and that any person could review or obtain a copy of the document, and could within 10 days from the date of publication, by submitting in writing to the City Clerk, an offer increasing the amount of the bid being considered by at least 10% percent of the first one thousand dollars (\$1000) and 5% of the remainder, accompanied by a bid deposit equal to 5% of the increased bid.

**The deadline to submit upset bids is March 21, 2011. At the time this agenda item was prepared, no upset bids had been received. Should an upset bid be received by the required deadline, Council will be advised and this item can be removed from the agenda.**

Council reserved the right to reject any and all offers at any time.

If Council determines to accept this offer, the property may be sold by accepting the offer and directing the City Attorney to prepare the Transfer of Deed.

## **Procedural History**

- March 8, 2011 - Council approved an amended Purchase and Option Agreement and approved the Resolution authorizing the advertisement via the upset bid process of an offer to purchase.
- March 11, 2011 – Date of Publication of Legal Ad in the Jacksonville Daily News describing the offer, explaining the upset bid process, and advising of the availability of the Purchase and Option Agreement for review in the City Clerk’s Office.
- March 21, 2011 – 5 PM – Deadline to submit upset bids. At the time this agenda item was prepared, no upset bids had been received. Should an upset bid be received by the required deadline, Council will be advised and this item can be removed from the agenda.

Council may at any time reject any and all offers.

## **Stakeholders**

- Ray Development and Consulting, LLC
- Citizens of Jacksonville

## **Options**

- Approve the Purchase and Option Agreement and Authorize the City Attorney to prepare the Deed of Transfer. **(RECOMMENDED)**

Pros: If this sale is consummated, this would put this property back on the tax books, possibly cause interest in purchasing the remaining acreage in the park, and ensure development of this property in accordance with specific uses which will be included as deed restrictions.

Cons: None

- Reject the Offer

Pros: The property would remain under the ownership of the City for whatever future use Council determines is in the best interest of the area.

Cons: Property would remain on the tax books.

- Defer Action - Should Council desire additional information, defer the request and provide direction to staff on the specific information Council would like to receive.



**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
WITH OPTION TO PURCHASE (the "Agreement")**

**THIS AGREEMENT**, including any and all addenda attached hereto ("Agreement"), is made by and between:

**RAY DEVELOPMENT AND CONSULTING, LLC**, a North Carolina limited liability company, and/or assigns ("Buyer"),

and

**CITY OF JACKSONVILLE**, a body politic and corporate ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Terms and Definitions:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property"** shall mean:

That certain tract or parcel of land situated in Jacksonville Township, Onslow County, North Carolina and being more particularly described as +/- 2.50 acre situated at the northeast intersection of New Frontier Way and Williamsburg Parkway, as shown on the sketch map attached hereto as Exhibit "A" (being a portion of Tract I as shown on a map recorded in Map Book 51, Page 89, Onslow County Registry - Tax Parcel 339-20.50), together with (i) all rights, easements, hereditaments and appurtenances pertaining to the Property; (ii) all buildings, improvements, trees, bushes, landscaping and foliage thereon; (iii) all right, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the Property, in and to any impact fee credits, development rights, allocations of development density or similar rights allocated or attributable to the Property, and any utility capacity allocated to or attributable to the Property. It is understood and agreed that Buyer, at Buyer's expense, shall cause to be prepared, by a professional land surveyor, a survey of the Property, which shall include a designation of that portion of the Property constituting Section 404 "wetlands" by the US Army Corps of Engineers ("USACE") (the "Survey"), to provide a more exact legal description, including that/those portions of the Property which constitute Section 404 "wetlands", which shall be substituted as Exhibit "A".

(b) **"Purchase Price"** shall mean the **product of SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$75,000.00) times the actual number of acres of the Property as determined by the "Survey", payable on the following terms:**

(i) **"Earnest Money"** shall mean **NINE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS (\$ 9,375.00)** to be paid to the City of Jacksonville, as Escrow Agent, upon execution and delivery of this Contract by Buyer to Seller. The Earnest Money shall be held in escrow to be applied to the Purchase Price at Closing (as hereinafter defined), or otherwise disbursed as provided in this Agreement.

(ii) **the balance of Purchase Price** to be paid by certified check, or other immediately available funds, at Closing.

(c) **"Closing"** shall mean the date and time of payment of the balance of the Purchase Price and recording of the deed. Closing shall occur on or before **sixty (60) days following the**

Attachment

**A**

**expiration date of the Examination Period**, at a time and place designated by written notice from Buyer to Seller, not less than ten (10) days prior to Closing.

(d) **“Contract Date”** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **“Examination Period”** shall mean the period beginning on the Contract Date and extending for a period of one hundred eighty (180) days thereafter. ***TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.***

(f) **“Seller’s Notice Address”** shall be as follows:

City of Jacksonville  
Attention: Richard Woodruff, City Manager  
P.O. Box 128  
Jacksonville, NC 28541  
except as same may be changed pursuant to Section 12.

(g) **“Buyer’s Notice Address”** shall be as follows:

RAY DEVELOPMENT AND CONSULTING, LLC  
Attn: Cliff Ray  
3684-C Henderson Drive  
Jacksonville, NC 28546  
except as same may be changed pursuant to Section 12.

**Section 2. Sale of Property and Payment of Purchase Price:** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

**Section 3. Proration of Expenses and Payment of Costs:** Seller and Buyer agree that all property taxes, based on the most recently available Property assessment, shall be prorated, on a calendar year basis, as of the date of Closing.

Seller shall pay for preparation of a special warranty deed and all other documents necessary to perform Seller’s obligations under this Agreement, excise taxes, transfer taxes, any deferred or rollback taxes, and other conveyance fees or taxes required by law, recording fees for any documents required to release any liens against the Property and Seller’s attorneys’ fees.

Buyer shall pay recording costs, fees for any title search, title insurance premium, fees for preparation of the Survey of the Property, the cost of any inspections or investigations undertaken by Buyer under this Agreement, fees and costs in connection with any loan of Buyer and Buyer’s attorneys’ fees.

**Section 4. Deliveries:** Seller agrees to use its best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, and surveys. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney’s file to Buyer and both Buyer’s and Seller’s agents and attorneys; and (2) the Property’s title insurer or its agent to release and disclose all materials in the Property’s title insurer’s (or title insurer’s agent’s) file to Buyer and both Buyer’s and Seller’s agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller’s request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys

and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

**Section 5. Evidence of Title:** Seller agrees to convey fee simple marketable title to the Property free and clear of all liens, encumbrances, encroachments and defects of title other than: (a) Exceptions under Schedule B of Seller's title insurance policy, (b) restrictions recorded in Book 2417, Page 498, Onslow County Registry, and (c) matters shown on any recorded plat of the Property ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens.

**Section 6. Conditions:** This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment, or waiver by Buyer, of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not marketable fee simple, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have ten (10) days to cure said noticed defects. If Seller does not cure the defects or objections within ten (10) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(c) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting and examining the Property. Buyer shall conduct all such on-site inspections, examinations, environmental audits, soil boring, compaction tests and other testing, of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's use and enjoyment of the Property. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(a) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing.

(d) **Zoning and Permitted Uses:** The Property is currently zoned in the B-1 zoning classification under the applicable zoning ordinances of the City of Jacksonville and the City will permit Buyer to petition for a change or modification of the zoning if current zoning does not allow the Property to be used for: (i) general office use, for operation of a post-secondary school and training facility, including, without limitation, the installation of educational training classrooms and laboratories, and for any other purpose consistent with the Legal Requirements and the nature of the Building intended to be constructed.

**IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

**Section 7. Leases:** Seller affirmatively represents and warrants that there are, or will be at the time of Closing, no leases, or rights of others to possession, affecting the Property.

**Section 8. Environmental:** Seller represents and warrants that it has no actual knowledge, and no knowledge which a reasonable person in the position of Seller would have gained as a result of a reasonable inquiry concerning the Property, of the presence or disposal, except as in accordance with applicable law, on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

**Section 9. Risk of Loss/Damage/Repair:** Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

**Section 10. Earnest Money Disbursement:** In the event that Buyer elects to terminate this Contract prior to the expiration of the Examination Period as provided in Section 6, supra, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach, including specific performance. In the event this offer is accepted and Buyer breaches this Agreement, then Seller shall be entitled to the Earnest Money as its sole consideration for this Contract.

**Section 11. Closing and New Use Restrictions:** At Closing, Seller shall deliver to Buyer a special warranty deed and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, (a) an owner's affidavit that either (i) there have been no improvements, additions, alterations, repairs or changes of any kind whatsoever made to the Property during the last one hundred twenty (120) days immediately preceding Closing, or (ii) if there have been any such improvements, repairs or changes, that all lienors or potential lienors in connection with such improvements, repairs or changes have been paid in full, (b) a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein.

Notwithstanding the permitted uses of the Property under the current zoning classification, as may be amended, the special warranty deed will include a restrictive use covenant restricting the use of the Property, unless otherwise agreed, by written instrument executed by the Seller, and recorded in the Onslow County Registry, to the following uses: Animal hospitals; builders supply and equipment sales; colleges or universities; governmental uses and operations such as fire stations, maintenance and operations facilities, and similar governmental facilities; commercial or non-commercial greenhouses or horticultural gardens; heavy equipment

sales and service; lumberyard, retail sales; offices - business, professional, and public; public utilities substations, storage and service yards; studios for artists, designers, photographers, and other similar activities; telecommunications antenna, collocation on existing tower; telecommunications antenna, placement on existing building; telecommunications tower, stealth; telecommunications tower, freestanding; flex space; and accessory uses. Provided, however, Buyer is permitted to request Seller to approve any use Seller and Buyer agree to that is allowed in B-1 zoning.

**Section 12. Notices:** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date (i) delivered in person, (ii) delivered to a nationally recognized overnight delivery carrier, or (iii) deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(f) as to Seller and in Section 1(g) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

**Section 13. Entire Agreement:** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

**Section 14. Enforceability:** This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

**Section 15. Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed for a period of six (6) months. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

**Section 16. Applicable Law:** This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

**Section 17. Assignment:** This Agreement is freely assignable by either party, provided, however, no assignment shall be deemed to release the assigning party from its obligations under this Agreement, unless otherwise provided in writing.

**Section 18. Tax-Deferred Exchange:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the Closing shall not be delayed; that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

**Section 19. Authority:** Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

**Section 20. Brokers:** (a) Buyer and Seller represent and warrant to each other that they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction, other than Cliff J. Ray with Ray Development and Consulting, LLC. Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer.

(b) Cliff J. Ray, Manager of Ray Development & Consulting, LLC, is a licensed North Carolina real estate broker with Richard Ray Real Estate. Mr. Ray is not participating as a broker in this transaction and will not be receiving a commission upon the purchase/sale of the subject property(ies) from either Buyer or Seller. However, in the event this Agreement/Option is assigned, Mr. Ray will participate and be compensated by the Assignee as a broker or consultant for the duration of the project. Furthermore, Richard Ray Real Estate and Mr. Ray, for marketing purposes, may act as listing agent/broker for the sale and lease of units in Jacksonville Business Park. The Seller (City of Jacksonville) is not responsible for any fees to either Ray Development and Consulting, LLC, or Richard Ray Real Estate.

**Section 21. Agreement to Grant Option to Purchase:** Provided that the transaction contemplated by this Agreement is consummated and Buyer closes the purchase of the Property, Seller hereby agrees to grant to Buyer the right and option to purchase (the "Option") the remaining area of Tract I as described on the map recorded in Map Book 51, Page 89, Slide L-1426, Onslow County Registry, consisting of approximately 3.95 acres (the "Option Tract"), under the following terms and conditions:

- A.. The term of the Option to purchase the "Option Tract" shall be for two (2) years commencing on the date of Closing of the Property under this Agreement (the "Option Period"). Buyer agrees to pay to Seller the sum of \$2,500.00 (the "Option Money") for the Option. The Option Money shall be non-refundable to Buyer, and applied to the purchase price of the Option Tract if Buyer exercises the Option and closes the purchase thereof as provided herein. Seller agrees to execute an instrument, in writing, on the date of Closing of the Property under this Agreement acknowledging Buyer's right and option to purchase the Option Tract, including the commencement and expiration date for exercising said Option.
- B. The Seller shall not be obligated to grant to Buyer the Option, unless and until the Buyer closes the purchase of the Property pursuant to the terms of this Agreement. In the event this Agreement is terminated for any reason, the Seller's obligation to grant the Option shall be deemed null and void. Prior to the execution of an instrument in writing by Seller granting the Option, Buyer shall have no right to purchase the Option Tract. Provided, however, Seller agrees not to sale, lease or enter into any negotiations for the sale or lease of the Option Tract so long as this Agreement is in full force and effect. The Buyer shall not be entitled to exercise the Option, unless and until it has been issued a building permit for construction of improvements on the Property.
- C. The purchase price for the Option Tract shall be the appraised value as determined by a qualified licensed real estate appraiser mutually agreed to by Seller and Buyer. Seller and Buyer shall each pay ½ of the real estate appraiser's fee. In the event Seller and Buyer cannot agree on the same appraiser, each party shall select a duly licensed real estate appraiser and the purchase price shall be the average of the two (2) appraised values. Each party shall be responsible for their respective appraiser's fee. Buyer shall have a current and accurate survey of the Option Tract prepared by a professional land surveyor, with the "wetlands" area designated by the USACE, at Buyer's expense, for preparation of the legal description of the Option Tract to be included in the deed of conveyance, which survey must be approved by Seller, in its reasonable discretion.
- D. Closing shall take place on or before sixty (60) days following the expiration date of the Option Period, at such place, in Onslow County, North Carolina, mutually agreed to by Seller and Buyer. **Time being of the essence.** At the closing of the Option Tract, Seller shall deliver to Buyer a special warranty deed, free of liens and encumbrances other than the following exceptions and reservations:
  - (i) Exceptions under Schedule B of Seller's title insurance policy;
  - (ii) restrictions recorded in Book 2417, Page 498, Onslow County Registry, and

- (iii) matters shown on any recorded plat of the Option Tract;
- E. Seller shall be responsible for payment of revenue stamps and the cost of preparation of the special warranty deed. Buyer shall pay the cost to record the deed, title examination fees, title insurance premium, the fees and costs for preparation of a survey and legal description of the Option Tract, including any subdivision and map recordation fees, and all fees, costs and expenses in connection with the financing of any portion of the purchase price. Seller shall be responsible for payment of property taxes through the year prior to closing. Property taxes for the year in which closing occurs shall be pro rated between Seller and Buyer.
- F. In the event Buyer fails to deliver to Seller written notice of its election to exercise the Option prior to the expiration date of the Option Period, or fails to close within sixty (60) days following the expiration date of the Option Period, Buyer's Option to purchase the Option Tract shall be deemed null and void, in which event, neither party shall have any claims or demands against the other under the terms hereof.

**Section 22. Non-Recordation of Agreement and Option.** Neither this Agreement, nor the Option, shall be recorded in any city, county, state or federal government office.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed, the day and year indicated, by their respective duly authorized officer.

**Buyer: RAY DEVELOPMENT AND CONSULTING, LLC**

By: Cliff J. Ray  
Cliff J. Ray, its Manager

Executed by Buyer this 24<sup>th</sup> day of February, 2011.

**Seller: CITY OF JACKSONVILLE**

By: \_\_\_\_\_  
Richard Woodruff, City Manager

Executed by Seller this \_\_\_\_\_ day of February, 2011.

**The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.**

City of Jacksonville

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



A circular professional seal for a North Carolina Professional Land Surveyor. The outer ring contains the text "NORTH CAROLINA" at the top and "PROFESSIONAL LAND SURVEYOR" at the bottom. In the center, the name "JOHN L. PIERCE" is written in a large arc, and the license number "L-2596" is printed below it. The seal is stamped in black ink on a light-colored document.

SURVEYOR 1765-2546  
LICENSE NUMBER

RECEIVED  
PUBLIC  
LOW COUNTY  
N.C.

NOTARY PUBLIC

Doc  
Reco  
Fee  
CMAI  
Mild  
BK 5





**CERTIFICATE OF CITY'S ATTORNEY**

I, the undersigned, John T. Carter Jr., the duly authorized and acting legal representative of THE CITY OF JACKSONVILLE, NORTH CAROLINA, do hereby certify as follows:

I have examined the attached Contract for the **Agreement For Purchase and Sale of Real Property With Option to Purchase** between the City of Jacksonville and **Ray Development and Consulting, LLC** and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legal binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPROVAL BY CITY FINANCE OFFICER**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Account # \_\_\_\_\_

Dollar amount of contract \_\_\_\_\_



# Request for City Council Action

**Consent  
Agenda  
Item:** **5**  
**Date:** 3/22/2011

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**Subject:** Authorization to Condemn Financial Guarantees  
**Department:** Public Services/Engineering  
**Presented by:** Tom Anderson  
**Presentation:** No

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## Issue Statement

As directed by Council, staff is requesting authorization to process condemnation of the expiring financial guarantees held by the City if the developer is unable or unwilling to provide renewed financial guarantees. It is also recommended that the Mayor and Council allow staff, if necessary, to extend the Surety Agreements and Warranties for up to one year.

<u>Project Name</u>	<u>Expiration Dates</u>	<u>Amount</u>	<u>Extension</u>
Marine Broadcasting Co.	AGR: 5/11/2011	\$18,462.00	7 <sup>th</sup>
Maynard Manor, Phase VI	CASH: 5/27/2011	\$1,702.10	2 <sup>nd</sup>
	AGR: 5/21/2011		2 <sup>nd</sup>
The Gables	LOC: 5/24/2011	\$36,400.10	2 <sup>nd</sup>

## Definitions:

LOC:	Letter of Credit	WAR:	Warranty	AGR:	Agreement
CD:	Certificate of Deposit	SIDE:	Sidewalk Agreement	BND:	Bond

## Financial Impact

None.

## Action Needed

To authorize staff to process condemnation of the financial guarantee if the developer is unwilling or unable to provide proper surety and to extend the Surety Agreement.

## Recommendation

Staff recommends that Council move to authorize staff to process condemnation of the financial guarantee if the developer is unwilling or unable to provide proper surety and to extend the Surety Agreement.

Approved: ☒ City Manager ☐ City Attorney

Attachments:

None



# Staff Report

Consent  
Agenda  
Item:

5

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## Authorization to Condemn Financial Guarantees

### **Introduction**

In order to keep sureties and agreements current, Staff needs permission from Council to extend or condemn expiring financial guarantees held by the City if the developer is unable or unwilling to provide renewed financial guarantees.

### **Procedural History**

The City's Subdivision Ordinance stipulates how the City handles Subdivision Agreements, their warranty periods and the financial guarantees related to that project. City Council must authorize the extension of an agreement or warranty period and/or give authorization to condemn financial guarantees. The following subdivisions have financial guarantees that soon will be expiring:

Marine Broadcasting Co. – This is a five lot subdivision with two lots remaining to be developed. The surety is to cover sidewalk installation along the two undeveloped lots.

Maynard Manor, Phase VI – The surety will expire May 27, 2011 and the agreement will expire May 21, 2011. This project is still under construction. The Developer needs to make some improvements and then may request a final inspection and acceptance of the public improvements for City maintenance. Once the project has been accepted, it will begin a one year warranty.

The Gables – The surety will expire May 24, 2011. The Developer needs to make some improvements and then may request a final inspection and acceptance of the 12" water main along Gum Branch Road for City maintenance. Once the project has been accepted, it will begin an eighteen month warranty.

### **Stakeholders**

- Developers: Popkin Brothers Enterprise; New Century Homes of Jacksonville, Inc.; Perimeter Three LLC;
- Residents of the City of Jacksonville

## **Options**

To authorize staff to process condemnation of the financial guarantee if the developer is unwilling or unable to provide proper surety and to extend the Surety Agreement.

### **(RECOMMENDED)**

To take no action would result in the developer having the ability to walk away from the agreement without any recourse leaving infrastructure that has not been installed and possibly at an expense to the City to complete the construction.



# Request for City Council Action

**Consent  
Agenda  
Item:** **6**  
**Date:** 3/22/2011

---

**Subject:** Tax Releases, Refunds, and Write-Offs

**Department:** Finance

**Presented by:** Gayle Maides, Interim Finance Director

**Presentation:** No

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## Issue Statement

The County/City Tax Collector and the City's Finance Director recommend releases, refunds, and write-offs of property taxes as attached. The detail list of these tax releases and refunds (that is, the listing by property name, amount, reason, etc.) is available in the Finance Office for review.

## Financial Impact

The tax releases, refunds, and write-offs as recommended by the City/County Tax Collector total, respectively, \$23,328.81, \$4,216.35, and \$54.75 (\$27,599.91).

## Action Needed

Review the tax releases, refunds and write-offs.

## Recommendation

Staff recommends that Council move to approve the tax releases, refunds and write-offs.

Approved: ☒ City Manager ☐ City Attorney

Attachments:

A Tax Releases, Refunds, and Write-offs



# Staff Report

**Consent  
Agenda  
Item:**

**6**

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## **Tax Releases, Refunds, and Write-Offs**

### **Introduction**

The Tax Releases, Refunds and Write-Offs as recommended by the City/County Tax Collector total, respectively, \$23,328.81, \$4,216.35, and \$54.75 (\$27,599.91).

Most of the Releases and Refunds are due to:

- 1) Clerical and/or addition errors on the Onslow County Abstracts,
- 2) Double charges for the same property,
- 3) Property erroneously listed as in this City,
- 4) Senior citizens exemptions,
- 5) Military non-resident.

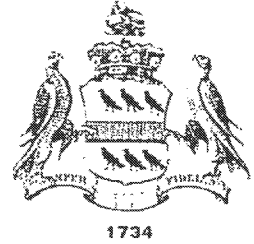
Write-offs are due to:

- 1) A bill that is \$3.00 or less
- 2) An over or underpayment of \$1.00 or less.

Other releases and refunds just have notations indicating that interest only is being released and there will be no corresponding reference explanation. The County's computer system automatically accrues interest on the first day of the month. There will be times when the County received payment on the day before or even on the same day that the account has accrued the interest. The County will adjust their accounts to remove the interest that was automatically charged in lieu of having accounts with balances usually less than \$1.00.

The listing of proposed releases, refunds and write-offs as submitted by the Tax Collector, are in conformity with the law. Based upon this information as provided, which is believed to be true and accurate, I recommend your approval of these tax releases, refunds, and write-offs.

W.C. Jarman  
*Chairman*  
Paul Buchanan  
*Vice-Chairman*  
Barbara Ikner  
William H. Keller III  
Lionell Midgett



MEMORANDUM

**TO:** The Honorable Mayor and City Council

**FROM:** Onslow County Tax Administration  
Betty Brown, Listing Supervisor

**SUBJECT:** Tax Releases and Refunds

[illegible]

Most of the releases are due to clerical errors on the Onslow County tax abstracts, addition problems, double charges for the same property, property picked up as being inside Jacksonville but actually outside city limits, citizens that can claim the senior citizens exemption but this exemption was not indicated on the tax abstracts, and military having vehicles registered in Onslow County but claiming another state as their legal residence, etc.

BB/sm

I have reviewed the attached listing of proposed releases, refunds, and write-offs. The requests are in conformity with the law. Based upon the information furnished me by the Tax Collector, which I believe to be true and accurate, I recommend their consideration as presented.

Gayle Maides  
Gayle Maides  
ASSISTANT FINANCE DIRECTOR

**Onslow County Tax Administration**  
**39 Tallman Street • Jacksonville, North Carolina • 28540**  
**Phone: 910-989-2200 Fax: 910-455-4579**  
[www.onslowcountync.gov](http://www.onslowcountync.gov)

Attachment

# A

**TAX RELEASE SUMMARY**
**JANUARY 2011**

YEAR	CODE	TAX RATE	PRINCIPAL	LATE LIST	TOTAL	TAX VALUE
2010	101-0000-111-0000	0.005380	16,183.60	80.36	16,263.96	3,008,104.09
2009	101-0000-111-1000	0.006260	6,138.13	83.71	6,221.84	980,531.95
2008	101-0000-111-1000	0.006260	439.69	5.83	445.52	70,238.02
2007	101-0000-111-1000	0.006260	165.21	-	165.21	26,391.37
2006	101-0000-111-1000	0.005316	67.08	-	67.08	12,618.51
2005	101-0000-111-1000	0.005900	91.39	-	91.39	15,489.83
2004	101-0000-111-1000	0.005900	-	-	-	-
2003	101-0000-111-1000	0.005900	-	-	-	-
2002	101-0000-111-1000	0.005900	-	-	-	-
2001	101-0000-111-1000	0.005900	-	-	-	-
2000	101-0000-111-1000	0.005900	73.81	-	73.81	12,510.17

TOTAL	23,158.91	169.90	23,328.81	4,125,883.94
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'00-09	7,064.85
2010	16,263.96



## TAX REFUND SUMMARY

JANUARY 2011

YEAR CODE	TAX RATE	PRINCIPAL	LATE LIST	INT.	TOTAL REFUND	TAX VALUE
2010 101-0000-311-0000	0.005380	2,826.29	4.69	1.99	2,832.97	525,332.71
2009 101-5000-412-2000	0.006260	666.34	2.00	28.06	696.40	106,444.09
2008 101-5000-412-2000	0.006260	475.64	11.20	6.99	493.83	75,980.83
2007 101-5000-412-2000	0.006260	179.88	2.34	10.93	193.15	28,734.82
2006 101-5000-412-2000	0.005316	-	-	-	-	-
2005 101-5000-412-2000	0.005900	-	-	-	-	-
2004 101-5000-412-2000	0.005900	-	-	-	-	-
2003 101-5000-412-2000	0.005900	-	-	-	-	-
2002 101-5000-412-2000	0.005900	-	-	-	-	-
2001 101-5000-412-2000	0.005900	-	-	-	-	-
2000 101-5000-412-2000	0.005900	-	-	-	-	-
<b>TOTAL</b>		<b>4,148.15</b>	<b>20.23</b>	<b>47.97</b>	<b>4,216.35</b>	<b>736,492.46</b>

**TAX WRITE-OFF SUMMARY**

**JANUARY 2011**

YEAR	CODE	TAX RATE	PRINCIPAL	LATE LIST	TOTAL	TAX VALUE
2010	101-0000-111-0000	0.005380	54.75	-	54.75	10,176.58
2009	101-0000-111-1000	0.006260	-	-	-	-
2008	101-0000-111-1000	0.006260	-	-	-	-
2007	101-0000-111-1000	0.006260	-	-	-	-
2006	101-0000-111-1000	0.005316	-	-	-	-
2005	101-0000-111-1000	0.005900	-	-	-	-
2004	101-0000-111-1000	0.005900	-	-	-	-
2003	101-0000-111-1000	0.005900	-	-	-	-
2002	101-0000-111-1000	0.005900	-	-	-	-
2001	101-0000-111-1000	0.005900	-	-	-	-
2000	101-0000-111-1000	0.005900	-	-	-	-

TOTAL	54.75	-	54.75	10,176.58
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'2000-2009	-
2010	54.75



# Request for City Council Action

**Consent  
Agenda  
Item:** **7**  
**Date:** 3/22/2011

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**Subject:** Establishment of the 2010 Jacksonville Redistricting Committee

**Department:** Legal and Community Programs

**Presented by:** John T. Carter, Jr., City Attorney & Glenn Hargett, Communications & Community Affairs Director

**Presentation:** No

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## Issue Statement

After each Census, the City is compelled to review the population of the wards and to determine if the deviation from an ideal ward size is significant. Such a review was undertaken when the redistricting data was released from the US Census Bureau and the Jacksonville wards were found to be significantly out of alignment from the ideal ward size.

At your January 4, 2011 workshop, you instructed staff to develop a committee to recommend realignment of the City's wards and to receive public input before doing so. Staff was assigned by the Council and the concept presented for study, input and realignment activities was endorsed.

## Financial Impact

The City will use in house resources to create the maps and serve the Committee. An outside attorney will likely be retained to review the process and to file the submission with the US Justice Department. Funding for the attorney has been provided for in the current budget and incidental expenses for the committee will be born from current resources.

## Action Needed

Consider the Resolution presented, establish the 2010 Redistricting Committee, name members to the Committee and authorize them to begin.

## Recommendation

Staff recommends Council move to adopt the Resolution as presented, name the persons suggested to the Committee, name the Chairman and Vice Chairman and authorize assigned staff to begin the process.

Approved: ☒ City Manager ☒ City Attorney

Attachments:

A Proposed Resolution



# Staff Report

Consent  
Agenda  
Item:

7

## Establishment of the 2010 Redistricting Committee

### Introduction

Jacksonville's wards were created to follow the one-person, one-vote concept and to promote harmony in the community. When realigned in 1990 and 2000, the wards were nearly equal in population. After the 2010 Census, the wards have become out of alignment and redistricting is necessary to bring the wards into compliance with the one-person, one-vote concept.

Additionally, Onslow County falls under special review by the US Justice Department's Voting Rights section and actions relating to elections, voting and districting fall under their jurisdiction for approval.

### Background Information

Jacksonville's ward system was created with four wards to allow geographic and cultural representation of the Citizenry of the City. Due to population changes the wards fall out of alignment from the 'ideal' ward which would be one-fourth of the population of the City.

A series of court cases have compelled entities with voter districts to assure that they are realigned after each Census if the alignment varies by more than 10% overall.

		2010 Population	Deviation from Ideal Ward	
Ward 1	Willingham	13,219	-4,317	-25%
Ward 2	Bittner	20,655	3,119	18%
Ward 3	Lazzara	20,806	3,270	19%
Ward 4	Coleman	15,465	-2,071	-12%
City		70,145		
Ideal Ward		17,536		
Redistrict Score 74				

The redistrict score is the addition of the integers from all the deviation percentages. Jacksonville far exceeds the 10% maximum and will need to redistrict.

City Staff has been involved in previous realignment efforts and most recently were called upon to speak at a School of Government event about public participation and to share

how Jacksonville performed the redistricting in 2000. That redistricting was one of the fastest approved Redistricting Plans in the State at that time.

As proposed at the January workshop, the City Council would appoint a five member ad hoc redistricting committee that would dissolve when the work is done. Committee members would be former Council members and members of the general community. The committee would receive education about the redistricting process, devise a public input plan, execute that plan and then after receiving public input, undertake actions to realign the wards. The group would adopt policies based on the public input before considering the realignment. A recommendation would be made to the Council from the Committee and the Committee would be available to make modifications based on the instructions from the Council likely received after a public hearing.

The Committee would work with the staff to have the plan which is adopted by the Council filed with the US Justice Department for approval and be available to help provide public information about the plan.

The committee's purpose would expire after the approval of the plan.

## **Membership**

At the January workshop, the staff was directed to find members of the committee that would follow the guidance given, including persons who have previously served on the Council and representatives of the community. Therefore, staff proposes the following as members of the Committee:

**Greg Johnston**, former City Council Member, former member of the 2000 Redistricting Committee

**Ernie Wright**, former County Commissioner, former member of the advisory group for staggered City Council Terms

**Robert Sandy**, former City Council Member

**Homer Spring**, former City Council Member

**Tiffany Burgess Choice**, former Youth Council Chairman, food management executive

## **Alternate Members**

It is proposed that the following be named as alternate members, who would act as shadow members but be able to serve in the place of someone who was not able to serve at any one meeting. Each alternate member would be invited to every meeting, given the same materials as the full members and invited to participate in the deliberations and be a part of the public input sessions:

**Margaret Brown**, former chairman and current member of the Onslow School Board

**Jan Bean Slagle**, former Mayor

**Robert Warlick**, attorney, member Chamber Governmental Affairs Committee

## **Officers**

It is proposed that Greg Johnston, given his former leadership with the 2000 Redistricting Committee, be named as chairman and that Ernie Wright, given his leadership with the effort create the staggered term system now in play, be named as vice-chairman.

## **Procedural History**

- January 4, 2011 – City Council Workshop on Redistricting and instructions given
- March 3, 2011 – Census data released for North Carolina

## **Stakeholders**

- Residents
- Voters
- Citizens of Jacksonville

## **Options**

Adopt the Resolution as presented, name the members to the Committee, name the Chairman and Vice Chairman and authorize the staff to execute the plan –

### **RECOMMENDED**

- Pros: Allows the redistricting process to proceed and wards to be realigned.
- Cons: None

Deny the Resolution

- Pros: None
- Cons: Council will undertake the redistricting procedure as a whole.

Defer Consideration – Should Council desire additional information, provide direction to staff on the specific information Council would like to receive.

## RESOLUTION (2011-)

### RESOLUTION CREATING THE 2010 REDISTRICTING COMMITTEE FOR THE CITY OF JACKSONVILLE

WHEREAS, the City of Jacksonville has a ward system designed to ensure representation throughout the City, and

WHEREAS, case law and guidance from the UNC School of Government believes that it is the best practice to consider redistricting if any district exceeds 10 percent deviation from the ideal ward size after the 2010 Census, and

WHEREAS, the initial Census numbers provided under PL 874-91 determined that the City's wards were significantly out of alignment and that redistricting to assure equal representation was advised, and

WHEREAS, after the 1990 and the 2000 Census counts, the City used various means to consider redistricting and found that the creation of a small committee with public input was the best method to provide for a recommendation to the City Council for changes in the ward geographies,

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby create the ad hoc 2010 Redistricting Committee for the City of Jacksonville for the purpose of hearing public input and making a recommendation to the City Council as follows:

**Membership:** The 2010 Redistricting Committee shall be composed of no more than five persons appointed by the City Council. Members may be added or replaced through Council action as deemed necessary to ensure the success of the Committee.

**Alternate Membership:** Three Additional Alternate Members may be named who should receive the same information, be invited to the same meetings and as appropriate participate in the meetings and discussions. Should any of the Members named by the Council be unable to participate in a meeting, the first named Alternate shall be empowered with the same duties as that member who was unable to participate. If other members are unable to participate, then the next name Alternate shall be empowered to participate in that meeting with the same duties as that member who was unable to participate.

**Purpose:** The purpose of the Committee shall be to become educated about the issues surrounding redistricting, provide public education about redistricting, to hear public input into the redistricting process, consider that input, devise the wards to meet all standards and requirements and then present their recommendation to the City Council. After a hearing of the City Council, the Committee may be asked to make adjustments. The Committee shall consider the wishes of the Council and then resubmit a plan for approval. The Committee shall undertake action to help inform the public about the revised wards and to ensure and advocate for approval before the US Justice Department.

**Sunset Provision:** When a final map of the wards is approved by the US Justice Department, then the purpose of this committee, the committee and the terms of the members dissolves.

**Authority:** The Committee shall act in accord to State Law and only as an advisory group to the City Council of the City of Jacksonville.

Attachment

**A**

Tasks:

1. The Committee shall seek to become educated and informed on matters pertaining to redistricting,
2. The Committee shall prepare a public input plan which should include public outreach sessions, input from special populations affected by the ward system and which would provide for public education about the process,
3. The Committee shall execute the public input and education plan,
4. The Committee shall consider and adopt clear guidance for the creation of the plans for redistricting after the public input has been received,
5. The Committee shall then deliberates the alignment and cause to be created maps and reports that would bring the wards into alignment,
6. The Committee shall recommend a plan to the City Council, and be present for public discussion,
7. The Committee shall consider instructions from the City Council after a public hearing if any for modifications or adjustments to the plan. After deliberation, the Committee shall submit a modified plan to the City Council for action.
8. After adoption, the Committee shall engage in a plan of public education about the plan, advocate and work for approval of the plan before the US Justice Department.

Adopted by the Jacksonville City Council in regular session this 22<sup>nd</sup> day of March, 2011.

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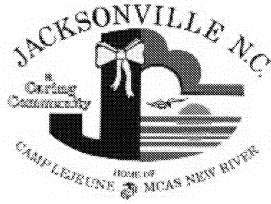
Sammy Phillips, Mayor

ATTEST:

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Carmen K. Miracle, City Clerk





# Request for City Council Action

Agenda Item:	<b>8</b>
Date:	3/22/2011

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**Subject:** FY11-12 Community Development Block Grant Construction Applications

**Department:** Development Services

**Presented by:** Reginald Goodson, AICP

**Presentation:** Yes

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## Issue Statement

Applications for Community Development Block Grant (CDBG) funded construction projects have been evaluated by the review committee. The review process has been completed and the committee requests that the City consider recommendations for funding.

## Financial Impact

A loan in the amount of \$256,000 at 2% interest for one construction project is proposed to be included in the CDBG budget for FY 2011-2012. Funding is also contingent upon availability of funding and approval of the Annual Action Plan by the U.S. Department of Housing and Urban Development.

## Action Needed

Consider approval of the committee's recommendation.

## Recommendation

Staff recommends that the Council move to accept the work of the review committee and instruct the staff to include \$256,000 in funding for the recommended project in the 2011-2012 Annual Action Plan.

Approved: ☒ City Manager ☐ City Attorney

Attachments:

None



# Staff Report

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## FY2011-2012 CDBG Construction Applications

### **Background**

During the preparation of the Annual Action Plan, staff provides an opportunity for non-profit organizations to apply for Community Development Block Grant (CDBG) funding. Applications are made available for both construction and non-construction projects. A review committee evaluates the applications and makes funding recommendations. During a City Council workshop in January 2010, Council requested that they be notified of CDBG funding invested in large construction projects. This notification has been previously accomplished by including the recommended project in a management report item.

The funding cycle for FY 2011-2012 opened on December 4, 2010. Community Development staff held a Funding Opportunity Workshop for organizations interested in applying for CDBG funding. The application requirements were reviewed and applications distributed. During the workshop the evaluation criteria were reviewed including the City's desire that CDBG funded projects are located in target areas. Target areas for priority consideration were listed in the application as follows:

- Weed and Seed New River Davis Street Corridor with further consideration for projects located in census tracts 15, 19, 20 and 22;
- Downtown; and
- City Approved Small Area Neighborhoods in order of designated priority
  - Carver Drive/Country Club Road
  - Georgetown
  - Maypatch
  - New River/Hargett Street
  - Bell Fork
  - Market Street/Annie Avenue
  - School Street/White Street
  - Onslow Drive/South Shore Drive
  - Doris Avenue/Henderson Avenue
  - Cardinal Road/Sandy Drive

## **Procedural History**

- November 2010: Public was notified of the Funding Opportunity Workshop scheduled for December 4, 2010.
- December 4, 2010: Funding Opportunity Workshop held. Presentation made on CDBG requirements and application was reviewed in detail. Twenty-four (24) citizens were in attendance representing eighteen (18) agencies. Applications were distributed during the workshop and as requested thereafter.
- January 28, 2011: Applications due. Three (3) non-construction applications were received from Onslow Community Outreach, Onslow United Transit and Salvation Army. Two (2) construction applications received from Abundant Life Community Outreach/The Affordable Housing Group and East Carolina Community Development, Inc.
- February 4, 2011: Review committee met to review and score applications.
- February 7, 2011: Forwarded Management Report item with funding recommendation for one construction project to the City Manager's Office.

## **Stakeholders**

Developers  
Low and moderate income households  
Citizens

## **Review of Applications**

Two (2) construction applications were received by the January 28, 2011 deadline. A review committee was formed to include two (2) representatives from the Community Development Advisory Committee (CDAC) and four (4) internal staff members. However, one CDAC representative was unable to participate in the review.

## **Basic Review Criteria**

Must meet <b>minimum eligibility</b> criteria: 501(c)(3); two years experience; for profit proposing to use funds for an eligible activity.	
Demonstrated <b>capacity</b> for carrying out the proposed project and for completing the project.	30 Points
<b>Quality</b> and effectiveness of the proposed project in addressing a priority need.	30 Points
<b>Cost effectiveness</b> of the proposed project.	30 Points
Applicant's ability to <b>leverage</b> additional resources. City will not fund 100%.	10 Points

## **Application Review**

**Abundant Life Community Outreach/The Affordable Housing Group** –Eagle Point Apartments includes the development of 64 units of affordable housing to be located near the intersection of Hargett Street and Onslow Drive. This project is located in a target area: the Weed and Seed Corridor, Census Tract 19. This site is also located in a Qualified Census Tract and is eligible to receive up to 10 points on their NCHFA tax credit application.

**East Carolina Community Development Corporation, Inc.** – Wellington Grove Apartments includes the development of 88 units of affordable housing to be located near Carolina Forest Boulevard. This project site is not located in a target area.

## **Disclosure**

Lillie Gray serves on the Board of Directors of Abundant Life Community Outreach (ALCO). In anticipation that ALCO was considering applying for CDBG funds, On June 28, 2010, Ms. Gray sought guidance from the U.S. Department of Housing and Urban Development. Mr. Gary Dimmick, Director of Community Planning and Development, informed Ms. Gray that: "As long as you serve as a volunteer without any pay and as long as you have no financial interest in any CDBG - funded contract or activity, there is no conflict of interest. See 24 CFR 570.611(b). In fact, having experts such as yourself on nonprofit boards is a good idea." Ms. Gray has no financial interest in the project and she did not participate in evaluation of the applications.

## **Funding Recommendations**

The Review Committee recommends that in FY 2011-2012, Abundant Life Community Outreach/The Affordable Housing Group be awarded a loan in the amount of \$256,000 at 2% interest.

### **Option 1: (Recommended)**

Council accept the committee's recommendation and approve the Abundant Life Community Outreach/The Affordable Housing Group project for funding. Approval would result in the creation of 64 units of affordable housing in a target area of the City.

### **Option 2:**

Council may recommend that funding be awarded to the Wellington Grove Apartments project located outside of a target area. Approval would result in the creation of 88 units of affordable housing; however, the project would not support the revitalization of target areas leading to continued slum and blight conditions in these areas.

### **Option 3:**

Council may recommend denial of both applications. This would result in the loss of additional affordable housing in the City and a missed opportunity to redevelop in target areas.



# Request for City Council Action

Agenda Item:	<b>9</b>
Date:	3/22/2011

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**Subject:** City Code Amendment – Noise Ordinance

**Department:** Police

**Presented by:** Michael Yaniero, Police Chief

**Presentation:** Yes

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## Issue Statement

While responding to recent noise complaints, the Police Department has discovered that a more comprehensive approach is needed in our current Noise Ordinance to address sound pressure levels of noise, specifically the low level frequencies (bass – “base”).

These low level frequencies, which cause vibration, are the basis of the majority of recent noise complaints received by the Police Department.

## Financial Impact

There is no financial impact to the City.

## Action Needed

Consider the options proposed by staff with regard to the proposed Ordinance.

## Recommendation

Staff recommends that Council adopt the Ordinance amending the City Code to include the “C” weighting of measuring sound pressure frequencies, and include the requirement of four sound level readings.

Approved: ☒ City Manager ☐ City Attorney

Attachments:

A Proposed Ordinance



# Staff Report

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## City Code Amendment — Noise Ordinance

### Introduction

The City of Jacksonville continues to see significant growth, including the development and expansion of commercial business abutting residential neighborhoods and subdivisions. A common citizen complaint received by the Jacksonville Police Department is noise emanating from businesses with increased sound amplification, such as nightclubs. The City first addressed this concern in 2007, when the current amplified sound ordinance was established.

The majority of the most recent complaints about noise are not the result of high frequency noise, but from the bass or lower sound pressure spectrum. These lower sound pressure frequencies are not addressed in our current City Code.

Police Department staff thoroughly researched sound level devices and equipment to measure sound pressure levels with a standardized frequency weighting and exponential time. Staff also studied the sound ordinances of other municipal governments in North Carolina, as well as a model ordinance prepared by Rutgers University. Staff felt strongly that there was a need to revisit the ordinance in order to address this important quality of life citizen concern.

A presentation by the Police Department at the Council's Workshop on March 8, 2011 included a demonstration by a professional sound engineer and a discussion of two options for amending the ordinance. The demonstration detailed the sound level readings on both high and low frequency sounds using the "A" and "C" weighting. After discussion, the Council directed staff to bring the amendment to the noise ordinance amendment before them at the next Council meeting.

### Procedural History

- **February 6, 2007** – City Code is amended to clarify and streamline enforcement;
- **February, 2011** – Police department receive repeated calls to the residential areas surrounding Northwoods Shopping Center complaining of noise emanating from a commercial business (nightclub);
- **February, 2011** – Police Department staff commence study to determine best direction to remedy noise complaints;
- **February, 2011** - Police officers collect sound samples for one week in early February, using currently owned JPD sound level measuring equipment. It is determined that the current ordinance does not address low level sound pressure frequencies (bass), which cause vibration, and are the basis of the most recent complaints;

- **February, 2011** - Police Department staff research sound level devices and equipment to measure sound pressure levels with a standardized frequency weighting and exponential time as well as ordinance and expert studies;
- **March 8, 2010** – Police Department staff brief City Council and staff during a Council Workshop. Professional sound engineers provide demonstration of low frequency sounds and use of the “A” and “C” level weighting measures on currently owned meters. Council directs staff to bring ordinance amendment for decision at next council meeting;
- **March 8, 2010** – Police Department staff draft amendments to the current ordinance to include the “C” weighting to address low level frequency sounds and equipment options for Council consideration.

The staff recommended changes to the ordinance simply enhance the current ordinance with the addition of a “C” weighting and a requirement of four readings. This option allows officers to enforce the noise ordinance to include low pressure noise frequencies utilizing currently owned sound measuring equipment. This straightforward option would incur no costs for the purchase of more technical sound measuring devices.

### **Stakeholders**

- Citizens of Jacksonville
- Police Department
- Business Owners

### **Options**

#### **Option 1- Adopt the amendments to the City Code as presented (RECOMMENDED)(Attachment A)**

##### **Pros:**

- Allow the Police Department to enforce the noise ordinance efficiently and effectively, regulating all noises, not just amplified sound.
- Improved quality of life in residential neighborhoods.
- Similar ordinances used in other North Carolina jurisdictions have proven to be effective.
- Use of Table 1 allows for ambient neighborhood noise levels, but limits the amount of increase in any neighborhood.
- The “C” weighting is more sensitive to low frequencies (bass speakers) than is the “A” weighting.
- Can use the six sound measuring devices currently owned by JPD – no purchase of additional equipment
- Would require four readings on sound meter and the requirement that all four readings be in excess of established standards to be in violation of code.
- Would include industry standard decibel levels as nationally recommended.

##### **Cons**

- May increase sound proofing costs to business owners operating adjacent to residential communities.

Option 2- Deny the amendments to the City Code as presented.

Pros:

- Will not increase sound proofing costs to business owners operating adjacent to residential communities.
- Can use the six sound measuring devices currently owned by JPD – no purchase of additional equipment

Cons:

- Will not allow the Police Department to enforce the noise ordinance efficiently and effectively, regulating all noises, not just amplified sound.
- Will not improve quality of life in residential neighborhoods.
- City's ordinance will not be similar to ordinances used in other North Carolina jurisdictions have proven to be effective.
- Will not allow use of Table 1 for ambient neighborhood noise levels, and will not limit the amount of increase in any neighborhood.
- Will not allow the use of the "C" weighting which is more sensitive to low frequencies (bass speakers) than is the "A" weighting.
- Would not require four readings on sound meter and the requirement that all four readings be in excess of established standards to be in violation of code.
- Would not include industry standard decibel levels as nationally recommended.



ORDINANCE (#2011-)

AN ORDINANCE AMENDING THE CITY CODE  
OF THE CITY OF JACKSONVILLE  
CHAPTER 15 – OFFENSES AND MISCELLANEOUS PROVISIONS  
ARTICLE II. OFFENSES AGAINST PUBLIC PEACE

BE IT ORDAINED by the City Council of the City of Jacksonville that Chapter 15, Offenses and Miscellaneous Provisions, Article II – Offenses Against Public Peace of the Jacksonville City Code is hereby amended as follows:

Add language shown in boldface type and renumber with Divisions and Section numbers as shown.

Delete existing language as indicated by strikeover text.

DIVISION 1. Generally

Sec. 15-27. Definitions.

"*Motor vehicle*" means any vehicle that is propelled other than by human or animal power on land.

"*Multifamily dwelling*" means any building comprising two or more dwelling units, including, but not limited to, apartments, condominiums, co-ops, multiple family houses, townhouses, and attached residences.

"*Plainly audible*" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The officer need not determine the title, specific words, or the artist performing the song.

"*Public right-of-way*" means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a governmental entity.

"*Public place*" Any public way, park, cemetery or open space adjacent thereto; any public lake or stream; and any place or business open to the use of the public in general, open to public view or to which the public has access.

Sec. 15-28. General prohibitions.

Subject to the provisions of this article, the creation of any unreasonably loud, disturbing and unnecessary noise in the city is prohibited. Noise of such character, intensity, and duration as to be detrimental to the life or health of any individual is prohibited.

Attachment

**A**

Sec. 15-29. Discharge of firearms.

It shall be unlawful for any person to needlessly fire any rifle, gun or revolver within the city limits; provided that this section shall not apply to any officer while in the discharge of the duties of his office.

Sec. 15-30. Discharging dangerous instruments.

It shall be unlawful for any person to discharge any air rifle, pellet gun, BB-gun, slingshot, bow and arrow or any other similar weapon within the city.

Sec. 15-31. Fireworks, firearms.

The firing or discharging of a gun, squibs, crackers, gunpowder or other combustible substances in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the police department, provided; however, that this section shall not prohibit the possession, sale, use or firing of paper caps and paper cap pistols so long as the same shall not constitute a willful breach of the peace, shall be deemed a violation of this article.

Sec. 15-32. Hunting and trapping.

It shall be unlawful for any person to engage in the hunting or trapping within five hundred (500) feet of any dwelling or place of business within the city limits. Hunting will be permitted in those unpopulated areas of the city limits traditionally used for hunting purposes. Trapping will not be permitted in any area of the city limits unless conducted by animal control officers or under the supervision of wildlife officers. (Ord. No. 89-26, 5-16-89)

Sec. 15-33 – 15 34. Reserved.

Sec. 15-35. Blowing horns.

The sounding of any horn, whistle or signal device on any automobile, motorcycle, bus or other vehicle or railroad train, except as a danger signal or as required by law, so as to create any unreasonable, loud or harsh sound or the sounding of such device for an unnecessary and unreasonable period of time shall be deemed a violation of this article.

Sec. 15-36. Sirens.

The use of any gong or siren upon any vehicle other than police, fire or other emergency vehicle shall be deemed a violation of this article.

Sec. 15-37. Bells, gongs.

The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof shall be deemed a violation of this article.

Sec. 15-38. Blowing steam whistles.

The blowing of any steam whistles attached to any stationary boiler, except as a warning of danger or to give notice of the time to begin or stop work, shall be deemed a violation of this article.

Sections 15-39- 15-42: Reserved

Sec. 15-43. Use of vehicles.

The use of any automobile, motorcycle, or vehicle so out of repair, so loaded or operated in such manner as to create loud or unnecessary grating, grinding, rattling, screeching of tires or other noise shall be deemed a violation of this article.

Sec. 15-44. Discharge of exhaust.

The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, boat motor or engine, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom, shall be deemed a violation of this article.

Sec. 15-45. Compressed air devices.

The use of any mechanical device operated by compressed air, unless the noise created thereby is effectively muffled and reduced, shall be deemed a violation of this article.

Sec. 15-46. Blowers, engines.

The operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise emitting therefrom is sufficiently muffled and the engine is equipped with a muffler device sufficient to deaden such noise, so that the same shall not cause annoyance to the public nor unreasonably disturb the rest and quiet of persons on adjacent premises or within the vicinity thereof shall be deemed a violation of this article.

Sec. 15-47. Loading, unloading operations.

The creation of loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and containers shall be deemed a violation of this article.

Sec. 15-48. Malfunctioning devices.

The operation of any noise-producing appliance or other mechanical device which, due to operational deficiencies, malfunction or other type of disrepair, causes loud and excessive noises in such a manner as to unreasonably annoy the public or disturb the rest and quiet of persons on adjacent premises or within the vicinity thereof shall be deemed a violation of this article.

Sec. 15-49. Garage, filling stations.

The conducting, operating or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m. shall be deemed a violation of this article.

Sec. 15-50 Pets.

The keeping of any animal or bird, which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity shall be deemed a violation of this article.

Sec. 15-51. Quiet zones.

The creation of any excessive noise on any street adjacent to any school, institution of learning, library, or sanitarium, or court while the same is in session, or within one hundred fifty (150) feet of any hospital, which unreasonably interferes with the working of such institutions; provided, that conspicuous signs are displayed in such streets indicating that the same is a school, court or hospital street, shall be deemed a violation of this article.

Sec. 15-52. Hawkers, peddlers, etc.

The shouting and crying of peddlers, hawkers, vendors, which disturbs the quiet and peace of the neighborhood shall be deemed a violation of this article.

Sec. 15-53. Noises to attract attention.

The use of any bell, drum, loudspeaker, or other instrument for the purpose of attracting attention by creation of noise to any performance, show, sale, display, or advertisement of merchandise shall be deemed a violation of this article.

## DIVISION 2 – AMPLIFIED SOUND

Sec. 15-54. Measurement **and Terminology**

- (a) **Measurement.** For the purpose of determining db(A)'s as referred to in this division, the noise shall be measured on the “A” weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.

**For the purpose of determining db(C)'s as referred to in this division, the noise shall be measured on the “C” weighting on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.**

- (a) **Terminology.** Major terminology used in this article is defined below. Terms not defined herein shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

- (1) ***A-weighted sound level:*** The sound pressure level in decibels as measured on a sound level meter using the A-frequency-weighted network. The level so read is designated dB(A).
- (2) ***C-weighted sound level:*** The sound pressure level in decibels as measured on a sound level meter using the C-frequency-weighted network. The level so read is designated dB(C).
- (3) ***Decibel (dB):*** Unit of level when the base of the logarithm is the tenth root of ten (10) and the quantities concerned are proportional to power. Unit symbol, dB.
- (4) ***Sound pressure level:*** Ten (10) times the logarithm to the base ten (10) of the ratio of the time-mean-square pressure of a sound, in a stated frequency band, to the square of the reference sound pressure in gases of twenty (20) micro Pa. Unit decibel (dB); abbreviation, SPL; symbol, Lp.
- (5) ***Sound level meter:*** Device used to measure sound pressure levels with a standardized frequency weighting and indicated exponential time weighting for measurements of sound level, or without time weighting for measurement of time-average sound pressure level or sound exposure level.
- (6) ***Sound level weighted sound pressure level:*** Ten (10) times the logarithm to the base ten (10) of the ratio of the squared A-frequency-weighted sound pressure to the squared reference sound pressure of twenty (20) micro Pa, the squared sound pressure being obtained with slow (S) (1,000 ms) exponentially weighted time-averaging selected. Unit decibel (dB). [However, herein the unit for A-frequency weighted measurements will be referred to simply as dB(A).]
- (7) ***Time-interval equivalent continuous A-frequency-weighted sound pressure level:*** Ten (10) times the logarithm to the base ten (10) of the ratio of the time-mean-square instantaneous A-frequency-weighted sound pressure during a stated time interval T, to the square of the standard reference sound pressure. Unit, decibel (dB); abbreviated as  $L_{Aeq,T}$
- (8) ***Time-interval equivalent continuous band sound pressure level:*** Sound pressure level for sound contained within a restricted frequency band during a stated time interval T. Unit, decibel (dB); abbreviated as  $L_{b,eq,T}$ .
- (9) ***Filters:*** Herein refers to either an octave-band or one-third (1/3) octave-band frequency filter as defined in ANSI S1.1-1994. Measurements with the A-frequency weighting filter provide a single overall sound level for a noise source after the contribution of the low frequencies has been significantly reduced. Octave-band and one-third (1/3) octave-band filter

**measurements provide more accurate information about the frequency pitch characteristics of the noise source.**

- (10) ***Steady-state sound:* A steady-state sound is one that exists twenty-five (25) percent of any one (1) measurement interval. A measurement interval is a continuous period of fifteen (15) seconds. Examples would include music sources, PA sounds, exhaust fan noise, heating and air-conditioner noise, etc.**
- (11) ***Adjoining property:* Property which shares a contiguous boundary with another.**

Sec. 15-55. Amplified sound prohibitions.

- (a) It shall be unlawful to:
  - (1) Operate or allow the operation of any sound amplification equipment **in a residential area** so as to create sounds registering 70 db between 9:00 a.m. and 10:00 p.m. or 60 db between 10:00 p.m. and 9:00 a.m., as measured anywhere within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the city police department.
  - (2) As to multifamily structures including apartments, condominiums, or other residential arrangements where boundary lines cannot readily be determined, operate or allow the operation of any sound amplification equipment so as to create sounds registering 55 db(A) between 9:00 a.m. and 10:00 p.m. or 50 db(A) between 10:00 p.m. and 9:00 a.m., as measured from any point within the interior of another residential unit in the same complex or within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the city police department. **When conducting indoor sound level measurements the measurements shall be taken at least three feet from any wall, floor or ceiling and all exterior doors and windows shall be closed prior to conducting measurements. When measuring total sound level all sound sources within the dwelling unit must be shut off (e.g., television, stereo). Measurements shall not be taken in areas which receive only casual use such as hallways, closets and bathrooms.**
  - (3) Operate or allow the operation of any sound amplification equipment **in any business, office, commercial, shopping center, or industrial zoned area** ~~for advertising purposes or otherwise to attract customers~~ so as to cast amplified sounds which are unreasonably loud and disturbing or which register more than 70 db(A) at or on the boundary of the nearest public place or adjacent property.
  - (4) Operate or allow the operation any sound amplification equipment in the public right-of-way:
    - a. Without a permit issued by the city police department; or
    - b. So as to produce sounds registering more than 70 db(A) ~~ten (10) feet or more from any electromechanical speaker between the hours of 9:00 a.m. and 10:00 p.m. or 60 db(A) ten (10) feet or more from any electromechanical speaker between the hours of 10:00 p.m. and 9:00 a.m. or so as to be plainly audible at a distance of twenty-five (25) feet in any direction from the operator.~~ (Ord. No. 07-06, 2-6-07)

**(b) Maximum Permissible Increase in Total Sound Levels within a Residential property.**

**(1) No person shall cause, suffer, allow, or permit the operation of any amplified sound production device in such a manner that the sound crosses a property line and raises the total sound levels above the neighborhood residual sound level by more than the permissible sound level limits when measured within the residence of a complainant. These sound level measurements shall be conducted with the sound level meter set for "C" weighting. The officer will take four consecutive readings of thirty (30) seconds each. If of all four of these readings exceeds the allowed limits, a violation of the ordinance has occurred.**

**(2) When conducting indoor sound level measurements the measurements shall be taken at least three feet from any wall, floor or ceiling and all exterior doors and windows shall be closed prior to conducting measurements. When measuring total sound level all sound sources within the dwelling unit must be shut off (e.g., television, stereo). Measurements shall not be taken in areas which receive only casual use such as hallways, closets and bathrooms.**

Sec. 15-56. Motor vehicles.

Personal vehicular music amplification equipment shall not be operated in such a manner as to be plainly audible at a distance of twenty five (25) feet in any direction from the operator or registering more than 70 db(A) ten (10) feet or more from the vehicle.

Sec. 15-57. Permits for additional amplification.

(a) *Application.* The application for a permit for additional amplification under Section 15-55 shall be submitted to the Jacksonville Police Department at least 10 working days but not more than 180 days in advance of the planned use except in an emergency. The application shall designate an individual person who shall be in control of the sound amplification equipment and ensure that its use complies with the terms of the permit.

(b) *Application Review.* The Chief of Police or his designee shall review the application for permit and make determinations as to the granting or denial of the requested permit based upon the following criteria:

- (1.) the use and activities permitted by the zoning regulations in such zones;
- (2.) the intensity of sound levels produced by activities and devices in such zones;
- (3.) the time at which such sounds levels occur;
- (4.) the duration of such sound levels;
- (5.) the proximity of such activities and devices to buildings and to dwellings;

- (6.) the history of complaints generated by previous activities similar in nature and context;
- (7.) the history of complaints against the applicant for unreasonable noise;
- (8.) whether the sound levels produced by such devices and activities are recurrent, intermittent, constant; and
- (9.) the density of habitation of such zones.

(c) *Notice of tentative approval.* Upon tentative approval, the applicant for a permit shall be responsible for mailing or otherwise delivering to the occupants of each property within a 500-foot radius of the facility for which the permit has been granted, as shown on the tax maps of the county, a notice stating the date and hours of the event. The notice shall be delivered at least 72 hours in advance of the event. The permit shall not be actually granted and issued until the applicant submits an notarized affidavit to the Jacksonville Police Department that such notices have actually been mailed or otherwise delivered.

(d) *Prohibited in residentially occupied boundaries.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 db(A) anywhere within the boundary line of the nearest residentially occupied property.

(e) *Denial; issuance of exceptional permit.* If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, he shall promptly submit a copy of the denied permit application together with a short statement of the reasons he believes he is entitled to a permit to the city manager or his designee. The City Manager or designee shall have the discretion to grant an exceptional permit waiving location, time, and/or db(A) requirements, upon his determination that the applicant has made a substantial showing of legal entitlement. Any such exceptional permit shall be promptly reported to the City Council.

#### Sec. 15-58. Enforcement and penalties.

(a) Any person who violates any provision of this division shall be subject to the following criminal penalties for violations. The first offense for violating any section of Chapter 15 shall be a fine of no more than one hundred dollars (\$100.00). The second offense shall be a fine of no more than two hundred and fifty dollars (\$250.00). The third and subsequent offense shall be a fine of no more than five hundred dollars (\$500.00) or imprisonment for up to thirty (30) days or both at the discretion of the court.

(b) Each calendar day during which the violation occurs shall constitute a separate and distinct offense.

(c) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this ordinance or from other law.



## DIVISION 3 – Curfews

### Sec. 15-59. Curfews for minors.

- (a) The purpose of this section shall be to establish a curfew for minors in the City of Jacksonville, thus assisting the parents and guardians of minors in the ever-increasingly difficult task of child rearing, and to promote the health, safety, and welfare of both minors and adults in the City of Jacksonville by creating an environment offering protection and security for all concerned.
- (b) As used in this section the following definitions shall apply:
- (1) Public place: Areas such as, but not limited to, all common areas open to all for common use; alleys, streets, or public places, or places of business and amusement; public vehicular areas, highways, and parks; establishments open to the public for the conduct of business.
  - (2) Guardian: One who legally has the care and management of the person of a child defined as a minor by this section.
  - (3) Minor: A person who has not reached his/her sixteenth birthday and is not married, emancipated, or a member of the armed services of the United States.
- (c) A curfew applicable to minors is established and shall be enforced as follows:
- (1) Time limits: It is unlawful for any minor to be or remain upon any public place as defined in this section in the City of Jacksonville between midnight Friday and five o'clock a.m. on Saturday, or between midnight Saturday and five o'clock a.m. on Sunday, or between the hours of eleven o'clock p.m. and five o'clock a.m. of the following morning on Sunday, Monday, Tuesday, Wednesday, or Thursday.
  - (2) Exceptions: The restrictions provided by subsection (c)(1) shall not apply to any minor who is accompanied by a guardian, parent or other person charged with the care and custody of such minor, or other responsible person over eighteen (18) years of age, nor shall the restriction apply to any minor who is traveling between his home or place of employment, church, municipal building or school where a function is being held.
  - (3) Responsibility of adults: It is unlawful for any parent, guardian, or other person charged with the care and custody of any minor to allow or permit such minor to be in or upon, or remain in or upon a public place within the City of Jacksonville within the curfew hours set by subsection (c)(1), except as otherwise provided in subsection (c)(2).
  - (4) Responsibility of business establishments: It is unlawful for any person, firm, or corporation operating a place of business or amusement to allow or permit any minor to be in or upon, or to remain in or upon, any place of business or amusement operated by them within the curfew hours set by subsection (c)(1), except as otherwise provided in subsection (c)(2).
  - (5) Enforcement:
    - a. When a minor is found to be in violation of this section the officer will, by telephone, check with the Records Center of the City of Jacksonville Police Department to determine if the juvenile is a first offender. If the juvenile is a first offender, he/she will be taken to the residence of his/her parent or guardian. A written warning will be given to that adult and an information report taken by the officer to include the name of the juvenile and

adult, and the time, date, and location of the offense. This report will be turned in to the records center and entered into the police department computer system. A copy of the report will be forwarded to the juvenile officers of the police department.

b. If, upon checking with the records center, the juvenile is found to be a repeat offender he/she will be taken to the residence of his/her parent or guardian and the adult will be subject to a criminal citation pursuant to subsection (c)(6) of this article. A report will be turned into the records center and entered into the police department computer system. A copy of the report will be forwarded to the juvenile officers of the police department.

c. If the juvenile is under twelve (12) years of age a report will be made and a copy forwarded to the Onslow County Department of Social Services.

(6) Aiding and abetting by adult, guardian, or parent: It shall be a violation of this section for an adult, guardian, or parent to allow, permit, encourage, aid or abet a minor in the violation of subsection (c)(1) of this section, except as otherwise provided in subsection (c)(2).

(7) Refusal of guardian or parent to take custody of a minor: If any guardian or parent refuses to take custody of his/her minor child found in violation of this section, the officers with custody of said minor shall contact the Onslow County Department of Social Services and release the minor to that agency, pending further investigation by the police department and the department of social services. The adult will be subject to a criminal citation pursuant to subsection (c)(6) of this section.

(8) Emergency curfew: Under the authority of N.C.G.S. 14-288-12, whenever the Mayor of the City of Jacksonville deems that an emergency exists, and there is a clear and present danger to the preservation of the public peace, health, life, or safety or to public or private property in the city necessitating expansion of the curfew provisions set forth in subsection (c)(1), the mayor may effect such expansion effective for the period of the emergency by proclamation. The proclamation shall contain a statement of the reasons for such necessity, the period of the expanded curfew, and provide that no minor under the age of sixteen (16) shall be upon or about or remain upon or about public places as defined by this section in the city between the hours of 8:00 p.m. and 5:00 a.m. of the following morning unless accompanied by his/her parent, guardian, or responsible adult. Said proclamation may further provide that no parent or guardian of any minor under the age of sixteen (16) shall allow the child to be upon or about or remain upon or about any public place as defined by this section in the city between the hours of 8:00 p.m. and 5:00 a.m. of the following morning unless the child is under direction or protection of some adult person with authority and consent of such parent or guardian for his/her being there. Said proclamation shall become effective thirty (30) minutes after being publicly announced by the mayor for the said period or until rescinded by the mayor or repealed by council in the manner in which ordinances are repealed. As soon as is reasonably possible the proclamation shall be published and reported in the local media and posted conspicuously about the City of Jacksonville.

(9) Punishment: The punishment for violation of this section shall be a fine of up to five hundred dollars (\$500.00) and/or imprisonment up to six (6) months.

## DIVISION 4 – Exceptions

### Sec. 15-60. Exceptions.

(a) The operational performance standards established by this Article shall not apply to any of the following noise sources:

1. Bell, chimes or carillons while being used in conjunction with religious services;
2. The operation of horns, sirens, or other emergency warning devices actually being used in emergency circumstances;
3. Emergency work to provide electricity, water, or other public utilities when public health or safety is involved;
4. School sponsored sporting events or school bands;
5. National Warning System (NAWAS): System used to warn the community of attack or imminent public danger such as flooding, hurricanes or explosions;
6. Noise of aircraft flight operations;
7. The unamplified human voice;
8. City and County sponsored festivals and events;
9. Public sporting events;
10. Public fireworks displays;
11. Generators having sound attenuating housing located at governmental structures when utilized for load management purposes or during an emergency;
12. Any event or activity that is covered by a noise permit granted by the City of Jacksonville.

It is the intention of the City Council that the provisions of this Ordinance shall be cross-referenced accordingly and shall become and be made part of the Code of the City of Jacksonville, North Carolina. All ordinances or parts of ordinances in conflict with the aforementioned are hereby repealed.

Adopted by the City Council of the City of Jacksonville in regular session this 22nd day of March, 2011.

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Sammy Phillips, Mayor

ATTEST:

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Carmen K. Miracle, City Clerk